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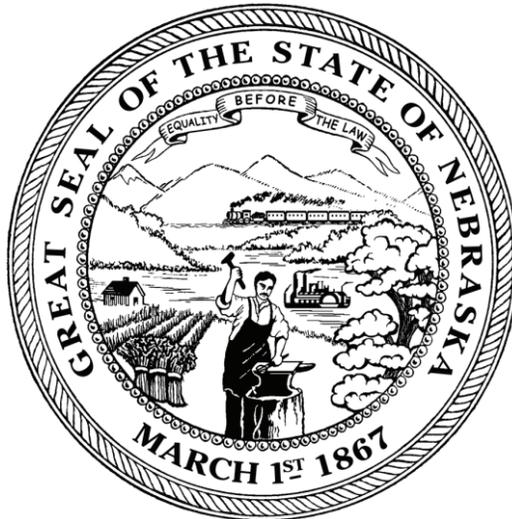


REVISED STATUTES OF NEBRASKA

2014 CUMULATIVE SUPPLEMENT

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Revisor of Statutes

For the benefit of the
State of Nebraska

CHAPTER 37

GAME AND PARKS

Article.

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ARTICLE 2

GAME LAW GENERAL PROVISIONS

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 37-202. Definitions, where found.
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 37-207.01. Authorized inspector, defined.
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37-201 Law, how cited.

Sections 37-201 to 37-811 and 37-1501 to 37-1510 shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009,

LB105, § 2; Laws 2010, LB743, § 3; Laws 2010, LB836, § 1; Laws 2012, LB391, § 1; Laws 2012, LB928, § 1; Laws 2014, LB699, § 1; Laws 2014, LB814, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB699, section 1, with LB814, section 1, to reflect all amendments.

Note: Changes made by LB699 became effective April 3, 2014. Changes made by LB814 became operative October 1, 2014.

37-202 Definitions, where found.

For purposes of the Game Law, unless the context otherwise requires, the definitions found in sections 37-203 to 37-247 are used.

Source: Laws 1929, c. 112, I, § 1, p. 407; C.S.1929, § 37-101; Laws 1931, c. 75, § 1, p. 199; Laws 1937, c. 89, § 1, p. 290; Laws 1941, c. 72, § 1, p. 300; C.S.Supp.,1941, § 37-101; Laws 1943, c. 94, § 1, p. 321; R.S.1943, § 37-101; Laws 1949, c. 100, § 1, p. 275; Laws 1953, c. 123, § 1, p. 386; Laws 1957, c. 139, § 1, p. 464; Laws 1959, c. 148, § 2, p. 563; Laws 1963, c. 200, § 1, p. 647; Laws 1965, c. 194, § 1, p. 592; Laws 1967, c. 216, § 1, p. 578; Laws 1971, LB 733, § 8; Laws 1973, LB 331, § 1; Laws 1975, LB 195, § 1; Laws 1975, LB 142, § 1; Laws 1976, LB 861, § 1; Laws 1981, LB 72, § 1; Laws 1985, LB 557, § 1; Laws 1987, LB 154, § 1; Laws 1989, LB 34, § 1; Laws 1993, LB 121, § 201; Laws 1993, LB 830, § 6; Laws 1994, LB 884, § 57; Laws 1994, LB 1088, § 1; Laws 1994, LB 1165, § 5; Laws 1995, LB 259, § 1; Laws 1997, LB 173, § 1; R.S.Supp.,1997, § 37-101; Laws 1998, LB 922, § 12; Laws 1999, LB 176, § 3; Laws 2002, LB 1003, § 15; Laws 2012, LB391, § 2.

37-206.01 Aquatic invasive species, defined.

Aquatic invasive species means exotic or nonnative aquatic organisms listed in rules and regulations of the commission which pose a significant threat to the aquatic resources, water supplies, or water infrastructure of this state.

Source: Laws 2012, LB391, § 3.

37-207.01 Authorized inspector, defined.

Authorized inspector means a person who meets the requirements established in rules and regulations of the commission to inspect for aquatic invasive species and includes, but is not limited to, a conservation officer and a peace officer as defined in section 49-801.

Source: Laws 2012, LB391, § 4.

37-215.01 Conveyance, defined.

Conveyance means a motorboat as defined in section 37-1204, a personal watercraft as defined in section 37-1204.01, a vessel as defined in section 37-1203, a trailer, or any associated equipment or containers which may contain or carry aquatic invasive species.

Source: Laws 2012, LB391, § 5.

37-238 Raptor, defined.

Raptor means any bird of the Accipitriformes, Falconiformes, or Strigiformes, including, but not limited to, caracaras, eagles, falcons, harriers, hawks, kites, osprey, owls, and vultures.

Source: Laws 1998, LB 922, § 48; Laws 2011, LB41, § 1.

ARTICLE 3

COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

Section

- 37-304. Commission; rules and regulations; commission orders.
- 37-314. Commission; rules and regulations; commission orders; powers; public hearing; notice; seasons; opening and closing; powers of commission; violations; penalty.
- 37-321. Fish; emergency created by drying up of waters; permission to take by any means; order; violation; penalty.

(b) FUNDS

- 37-327. Commission; fees; duty to establish; limit on increase.
- 37-327.01. Game Law Investigation Cash Fund; created; use; investment; record-keeping duties.
- 37-327.02. Game and Parks Commission Capital Maintenance Fund; created; use; investment.
- 37-327.03. Game and Parks State Park Improvement and Maintenance Fund; created; use; investment.

(c) STATE PARK SYSTEM

- 37-351. Nebraska Outdoor Recreation Development Cash Fund; created; investment.
- 37-352. Nebraska Outdoor Recreation Development Cash Fund; disbursements; commission; multiyear recreational development plan.

(d) PROPERTY CONVEYED BY COMMISSION

- 37-354. Operation and maintenance; requirements; compliance and enforcement.

(e) GENERAL PROVISIONS

37-304 Commission; rules and regulations; commission orders.

(1) The commission may adopt and promulgate rules and regulations, under the procedures set forth in the Administrative Procedure Act, governing the administration and use of all property, real and personal, under its ownership or control.

(2) The commission shall adopt and promulgate rules and regulations it deems necessary to administer the activities and facilities described in sections 37-305 to 37-313.

(3) The commission may pass, by majority vote, commission orders which govern (a) conservation orders, (b) seasons, (c) open and closed areas, and (d) bag limits as described in section 37-314.

Source: Laws 1998, LB 922, § 62; Laws 2013, LB499, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

37-314 Commission; rules and regulations; commission orders; powers; public hearing; notice; seasons; opening and closing; powers of commission; violations; penalty.

(1) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, fix, prescribe, and publish rules and regulations regarding the methods or type, kind, and specifications of hunting, fur-harvesting, or fishing gear used in the taking of any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds. Such rules and regulations may be amended, modified, or repealed from time to time and shall be based upon investigation and available but reliable data relative to such limitations and standards.

(2) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, pass and publish commission orders regarding (a) conservation orders authorized by the United States Fish and Wildlife Service, (b) open seasons and closed seasons, either permanent or temporary, (c) bag limits, including the age, sex, species, or area of the state in which any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds may be taken, or (d) the taking of any particular kinds, species, or sizes of game, game fish, nongame fish, game animals, fur-bearing animals, and game birds in any designated waters or areas of this state. The commission may pass such commission orders after due investigation and having due regard to the distribution, abundance, economic value, breeding habits, migratory habits, and causes of depletion or extermination of the same in such designated waters or areas and having due regard to the volume of the hunting, fur harvesting, and fishing practiced therein and the climatic, seasonal, and other conditions affecting the protection, preservation, and propagation of the same in such waters or areas. The commission orders may be amended, modified, or repealed from time to time. Commission orders shall be based upon investigation and available but reliable data relative to such limitations and standards.

(3) The commission shall hold at least one public hearing in accordance with section 37-104 on each proposed commission order or amendment, modification, or repeal of a commission order and shall hold at least one public hearing in accordance with section 37-104, in addition to all other requirements of the Administrative Procedure Act, on each proposed rule and regulation or amendment, modification, or repeal of a rule or regulation. The commission shall give notice of such hearing to the public at least thirty days prior to the hearing by posting it on the commission's web site. No commission order shall be valid against any person until fifteen days after such order has been posted on the commission's web site. Each rule, regulation, amendment, modification, and repeal shall specify the date when it shall become effective and while it remains in effect shall have the force and effect of law.

(4) Regardless of the provisions of this section or of other provisions of the Game Law which empower the commission to set seasons on game birds, fish, or animals or provide the means and method by which such seasons are set or promulgated and regardless of the provisions of the Administrative Procedure Act, the commission may close or reopen any open season previously set on game birds, fish, or animals in all or any specific portion of the state. The commission shall only close or reopen such seasons by majority vote at a valid special meeting called under section 37-104 and other provisions of statutes regarding the holding of public meetings. Any closing or reopening of an open season previously set by the commission shall not be effective for at least twenty-four hours after such action by the commission. The commission shall make every effort to make available to all forms of the news media the

information on any opening or closing of any open season on game birds, fish, or animals previously set. The commission may only use this special provision allowing the commission to open or close game bird, fish, or animal seasons previously set in emergency situations in which the continuation of the open season would result in grave danger to human life or property or to bird, fish, or wild animal populations. The commission may also close or reopen any season established by a conservation order under the same provisions pertaining to closing and reopening seasons in this section.

(5) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1929, c. 112, III, § 1, p. 413; C.S.1929, § 37-301; Laws 1931, c. 70, § 1, p. 190; Laws 1937, c. 89, § 5, p. 292; C.S.Supp.,1941, § 37-301; Laws 1943, c. 94, § 5, p. 324; R.S. 1943, § 37-301; Laws 1957, c. 242, § 31, p. 844; Laws 1972, LB 777, § 4; Laws 1972, LB 1284, § 14; Laws 1975, LB 489, § 2; Laws 1981, LB 72, § 13; Laws 1989, LB 34, § 12; R.S.1943, (1993), § 37-301; Laws 1998, LB 922, § 72; Laws 1999, LB 176, § 14; Laws 2009, LB105, § 3; Laws 2013, LB499, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

37-321 Fish; emergency created by drying up of waters; permission to take by any means; order; violation; penalty.

The secretary of the commission may, by order, authorize the taking of fish by any means and in any number whenever the secretary determines, pursuant to standards imposed by rules and regulations adopted and promulgated by the commission, that such action is necessary for proper fish management as a result of an emergency created by the drying up of any waters inhabited by fish. Such determination shall specify the waters in which such emergency action is desirable, and the authorization so granted shall extend to such waters and to no others. The taking of any fish in violation of this section shall be a Class V misdemeanor.

Source: Laws 1961, c.174, § 7, p. 521; Laws 1977, LB 40, § 189; R.S.1943, (1993), § 37-503.06; Laws 1998, LB 922, § 79; Laws 2013, LB499, § 3.

(b) FUNDS

37-327 Commission; fees; duty to establish; limit on increase.

(1) The commission shall establish fees for licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act as provided in the Game Law and State Boat Act. The commission shall not increase any fee more than six percent per year, except that if a fee has not been increased by such percentage in the immediately preceding year, the difference between a six percent increase and the actual percentage increase in such preceding year may be added to the percentage increase in the following year. Such fees shall be collected and disposed of as provided in the Game Law

and State Boat Act. The commission shall, as provided in the Game Law and State Boat Act, establish issuance fees to be retained by authorized agents issuing such licenses, permits, stamps, bands, registrations, and certificates. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(2) Prior to establishing any fee, the commission shall, at least thirty days prior to the hearing required in section 84-907, make the following information available for public review:

(a) The commission's policy on the minimum cash balance to be maintained in the fund in which the revenue from the fee being established is deposited and the justification in support of such policy;

(b) Monthly estimates of cash fund revenue, expenditures, and ending balances for the current fiscal year and the following two fiscal years for the fund in which the revenue from the fee being established is deposited. Estimates shall be prepared for both the current fee schedule and the proposed fee schedule; and

(c) A statement of the reasons for establishing the fee at the proposed level.

(3) The commission may adopt and promulgate rules and regulations to establish fees for expired licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act. The commission shall collect the fees and remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1993, LB 235, § 1; R.S.1943, (1996), § 81-814.02; Laws 1998, LB 922, § 85; Laws 1999, LB 176, § 16; Laws 2009, LB105, § 4; Laws 2011, LB41, § 2.

Cross References

State Boat Act, see section 37-1201.

37-327.01 Game Law Investigation Cash Fund; created; use; investment; record-keeping duties.

(1) The Game Law Investigation Cash Fund is created. The commission shall use the fund for the purpose of obtaining evidence for enforcement of the Game Law. The fund shall be funded through revenue collected under the Game Law and budgeted or allocated to the fund by the commission, and through donations from persons, wildlife groups, and other charitable sources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) For the purpose of establishing and maintaining legislative oversight and accountability, the commission shall formulate record-keeping procedures for all expenditures, disbursements, and transfers of cash from the Game Law Investigation Cash Fund. Based on these record-keeping procedures, the commission shall prepare and deliver electronically to the Clerk of the Legislature by September 15 of each year a detailed report of the previous fiscal year which includes, but is not limited to: (a) The June 30 balance in the Game Law Investigation Cash Fund and the amounts delivered to the commission for distribution to agents and informants; (b) the total amount of expenditures; (c) the purpose of the expenditures including: (i) Salaries and any expenses of all agents and informants; (ii) front money for wildlife purchases; (iii) type of

wildlife and amount purchased; and (iv) amount of front money recovered; (d) the total number of informants on payroll; and (e) the results procured through such transactions. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the secretary of the commission.

(3) The commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 788, § 1; Laws 2012, LB782, § 35.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

37-327.02 Game and Parks Commission Capital Maintenance Fund; created; use; investment.

The Game and Parks Commission Capital Maintenance Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132, transfers authorized by the Legislature, and any gifts, grants, bequests, or donations to the fund. The fund shall be administered by the commission and shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure within the statutory authority and administration of the commission. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2014, LB814, § 2.

Operative date October 1, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

37-327.03 Game and Parks State Park Improvement and Maintenance Fund; created; use; investment.

The Game and Parks State Park Improvement and Maintenance Fund is created. The fund shall consist of transfers made by the Legislature and any gifts, grants, bequests, or donations to the fund. Money in the fund shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure in the state park system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2014, LB906, § 4.

Effective date March 30, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(e) STATE PARK SYSTEM

37-351 Nebraska Outdoor Recreation Development Cash Fund; created; investment.

There is hereby created a fund to be known as the Nebraska Outdoor Recreation Development Cash Fund. The fund shall contain the money received

pursuant to section 77-2602 and any funds donated as gifts, bequests, or other contributions to such fund from public or private entities. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Nebraska Outdoor Recreation Development Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1978, LB 109, § 4; R.S.1943, (1993), § 37-1303; Laws 1998, LB 922, § 109; Laws 2009, First Spec. Sess., LB3, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

37-352 Nebraska Outdoor Recreation Development Cash Fund; disbursements; commission; multiyear recreational development plan.

(1) No appropriation shall be made from the Nebraska Outdoor Recreation Development Cash Fund until the commission has presented electronically a multiyear recreational development plan to the Legislature for its review, modification, and final approval. An updated version of such plan shall also be submitted electronically to the Legislature annually for its modification and approval. The money in such fund shall be administered according to this section by the commission for the development, operation, and maintenance of areas of the state park system. The money in such fund may be used in whole or in part for the matching of federal funds. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services.

(2) When a recreational plan is prepared for any state park system area or part of a state park system area cooperatively managed by the commission and the Nebraska State Historical Society, such plan shall insure that adequate funds are appropriated to develop and maintain historical aspects.

Source: Laws 1978, LB 109, § 5; Laws 1989, LB 18, § 3; R.S.1943, (1993), § 37-1304; Laws 1998, LB 922, § 110; Laws 2012, LB782, § 36.

(g) PROPERTY CONVEYED BY COMMISSION

37-354 Operation and maintenance; requirements; compliance and enforcement.

Property conveyed by the commission pursuant to sections 90-272 to 90-275 and 90-278 shall be operated and maintained as follows:

(1) The property shall be maintained so as to appear attractive and inviting to the public;

(2) Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards;

(3) Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention and similar activities shall be maintained for proper public safety;

(4) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use; and

(5) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

The commission shall be responsible for compliance and enforcement of the requirements set forth in this section.

Source: Laws 2010, LB743, § 4; Laws 2011, LB207, § 2; Laws 2011, LB563, § 2; Laws 2012, LB739, § 2.

ARTICLE 4

PERMITS AND LICENSES

(a) GENERAL PERMITS

Section

- 37-404. Permits; qualifications; limitations.
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- 37-4,100. Repealed. Laws 2011, LB 41, § 31.
- 37-4,101. Repealed. Laws 2011, LB 41, § 31.
- 37-4,102. Repealed. Laws 2011, LB 41, § 31.
- 37-4,103. Raptors; violations; penalty.
- 37-4,107. Bullfrogs; fishing permit required; manner of taking.
- 37-4,111. Permit to take paddlefish; issuance; fee.

(a) GENERAL PERMITS

37-404 Permits; qualifications; limitations.

(1) Any resident of the United States who has resided in this state continuously for a period of thirty days before applying for a permit under the Game Law and who has a bona fide intention of becoming a legal resident of this state, supported by documentary proof, shall be deemed to be a resident and may be issued a resident permit under the Game Law.

(2) No hunting permit shall be issued to any person who is known to have a significant physical or mental disability and who is unable to safely carry or use a firearm because of such disability except as provided in section 37-404.01.

(3) The commission may limit the number of days for which a permit is issued and the number of fish or game birds taken on one permit. The commission may provide for a method of tagging and identification of fish and game birds taken under a nonresident permit.

Source: Laws 1998, LB 922, § 114; Laws 1999, LB 176, § 17; Laws 2003, LB 305, § 4; Laws 2014, LB699, § 3.
Effective date April 3, 2014.

37-404.01 Hunting permit; person with developmental disability; license-purchase exemption certificate; application; contents.

A hunting permit may be issued to any person who has a developmental disability and who has a license-purchase exemption certificate issued by the commission authorizing such person to purchase a hunting permit. The commission may adopt and promulgate rules and regulations to establish forms and procedures for the issuance of license-purchase exemption certificates. Any license-purchase exemption certificate issued pursuant to this section shall be issued at no cost to the person who has a developmental disability and shall clearly state on its face that the holder must at all times while hunting be accompanied as described in subsection (4) of section 37-413. No license-purchase exemption certificate shall be issued to any person who has been found by any court or mental health board to pose a current danger to himself or herself or others. As part of the application process for a license-purchase exemption certificate, a person who has a developmental disability shall present the commission with a written authorization signed by a physician indicating that the person who has a developmental disability is at all times capable of understanding and following directions given by another person and that the person who has a developmental disability is not a danger to himself or herself or others while engaged in hunting with a firearm. For purposes of this section, developmental disability has the same meaning as in section 83-1205.

Source: Laws 2014, LB699, § 2.
Effective date April 3, 2014.

37-405 Hunting, fishing, or fur-harvesting permit; expiration; duties of holder.

(1) The commission shall provide for the issuance of permits to hunt, fish, or harvest fur. Application for such permits shall be made to the commission or its agents and shall contain such information as may be prescribed by the commission. All applications for permits to harvest fur shall include the applicant's social security number. A permit shall authorize the person to whom it is issued to hunt, fish, or harvest fur-bearing animals as provided by the Game Law during the period for which the permit is issued.

(2) If the holder of a hunting permit is a hunter of migratory game birds, he or she shall be required to declare himself or herself as such and provide information regarding his or her migratory game bird hunting activity to the commission. Documentation of such a declaration shall be made on the hunting permit or a separate document which shall become a part of the permit. Costs to the commission of implementing such declaration and documentation and for participation in a federal program designed to obtain survey information on migratory bird hunting activity shall be funded from the State Game Fund. For purposes of this subsection, migratory bird has the definition found in 50 C.F.R. part 10, subpart B, section 10.12, and migratory game bird has the definition found in 50 C.F.R. part 20, subpart B, section 20.11(a).

(3)(a) All permits shall expire at midnight on December 31 in the year for which the permit is issued, except as otherwise provided in subdivision (b) of this subsection and sections 37-415, 37-420, and 37-421.

(b) The commission may issue multiple-year permits to hunt, fish, or harvest fur. The permits shall expire at midnight on December 31 in the last year for which the permit is valid.

(c) A multiple-year permit issued to a resident of Nebraska shall not be made invalid by reason of the holder subsequently residing outside of Nebraska.

(4) A person who is hunting, fur harvesting, or fishing shall present evidence of having a permit immediately upon demand to any officer or person whose duty it is to enforce the Game Law. Any person hunting, fishing, or fur harvesting in this state without such evidence shall be deemed to be without such permit.

(5) The commission shall adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1929, c. 112, II, § 2, p. 409; C.S.1929, § 37-202; Laws 1935, c. 84, § 1, p. 274; C.S.Supp.,1941, § 37-202; Laws 1943, c. 94, § 2, p. 322; R.S.1943, § 37-202; Laws 1947, c. 131, § 1, p. 373; Laws 1975, LB 79, § 1; Laws 1979, LB 434, § 1; Laws 1981, LB 72, § 3; Laws 1985, LB 224, § 1; Laws 1989, LB 34, § 4; Laws 1997, LB 173, § 2; Laws 1997, LB 752, § 86; R.S.Supp.,1997, § 37-202; Laws 1998, LB 922, § 115; Laws 1999, LB 176, § 18; Laws 2003, LB 305, § 5; Laws 2011, LB41, § 3.

37-407 Hunting, fishing, and fur-harvesting permits; fees.

(1) The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to the state for resident and nonresident annual hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident two-day hunting permits issued for periods of two consecutive days, as provided in this section.

(2) The fee for a multiple-year permit shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the permit will be valid times the fee required for an annual permit as provided in subsection (3) or (4) of this section. Payment for a multiple-year permit shall be made in a lump sum at the time of application. A replacement multiple-year permit may be issued under section 37-409 if the original is lost or destroyed.

(3) Resident fees shall be (a) not more than thirteen dollars for an annual hunting permit, (b) not more than seventeen dollars and fifty cents for an annual fishing permit, (c) not more than eleven dollars and fifty cents for a three-day fishing permit, (d) not more than eight dollars for a one-day fishing permit, (e) not more than twenty-nine dollars for an annual fishing and hunting permit, and (f) not more than twenty dollars for an annual fur harvesting permit.

(4) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than eighty dollars for an annual hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(a) of this section for an annual hunting permit, (c) not more than fifty-five dollars for a two-day hunting permit plus the cost of a habitat stamp, (d) not more than nine dollars for a one-day fishing permit, (e) not more than sixteen dollars and fifty cents for a three-day fishing permit, (f) not more than forty-nine dollars and fifty cents for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than one hundred fifty dollars for an annual fishing

and hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(e) of this section for an annual fishing and hunting permit.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S.1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws 1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2; Laws 2009, LB105, § 5; Laws 2011, LB41, § 4.

37-410 Permits; unlawful acts; penalty; confiscation of permits; residents under sixteen years of age, no permit necessary.

(1) It shall be unlawful (a) for any person who has been issued a permit under the Game Law to lend or transfer his or her permit to another or for any person to borrow or use the permit of another, (b) for any person to procure a permit under an assumed name or to falsely state the place of his or her legal residence or make any other false statement in securing a permit, (c) for any person to knowingly issue or aid in securing a permit under the Game Law for any person not legally entitled thereto, (d) for any person disqualified for a permit to hunt, fish, or harvest fur with or without a permit during any period when such right has been forfeited or for which his or her permit has been revoked by the commission, or (e) for any nonresident under the age of sixteen years to receive a permit to harvest fur from any fur-bearing animal under the Game Law without presenting a written request therefor signed by his or her father, mother, or guardian.

(2) All children who are residents of the State of Nebraska and are under sixteen years of age shall not be required to have a permit to hunt, harvest fur, or fish.

(3) Any person violating subdivision (1)(a), (b), (c), or (d) of this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one hundred dollars for violations involving a fishing permit, at least one hundred fifty dollars for violations involving a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for violations involving an antelope permit, at least five hundred dollars for violations involving an elk permit, and at least one thousand dollars for violations involving a mountain sheep permit. Any person violating subdivision (1)(e) of this section shall be guilty of a Class III misdemeanor and shall be fined at least

seventy-five dollars. Any permits purchased or used in violation of this section shall be confiscated by the court.

Source: Laws 1929, c. 112, II, § 8, p. 411; C.S.1929, § 37-208; Laws 1941, c. 72, § 8, p. 305; C.S.Supp.,1941, § 37-208; R.S.1943, § 37-208; Laws 1949, c. 102, § 1, p. 280; Laws 1959, c. 150, § 2, p. 569; Laws 1977, LB 40, § 173; Laws 1981, LB 72, § 6; Laws 1989, LB 34, § 9; R.S.1943, (1993), § 37-208; Laws 1998, LB 922, § 120; Laws 1999, LB 176, § 22; Laws 2003, LB 305, § 7; Laws 2009, LB105, § 6.

37-411 Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.

(1) Unless issued a permit as required in the Game Law, it shall be unlawful:

(a) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to engage in fur harvesting or possess any fur-bearing animal or raw fur. Nonresident fur-harvesting permits may be issued only to residents of states which issue similar permits to residents of Nebraska;

(b) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to hunt or possess any kind of game birds, game animals, or crows;

(c) For any person who is sixteen years of age or older to hunt or possess any migratory waterfowl without a federal migratory bird hunting stamp and a Nebraska migratory waterfowl stamp as required under the Game Law and rules and regulations of the commission; or

(d) For any person who is sixteen years of age or older to take any kind of fish, bullfrog, snapping turtle, tiger salamander, or mussel from the waters of this state or possess the same except as provided in section 37-402. All nonresident anglers under sixteen years of age shall be accompanied by a person who has a valid fishing permit.

(2) It shall be unlawful for a nonresident to hunt or possess any kind of game birds or game animals, to take any kind of fish, mussel, turtle, or amphibian, or to harvest fur with a resident permit illegally obtained.

(3) It shall be unlawful for anyone to do or attempt to do any other thing for which a permit is required by the Game Law without first obtaining such permit and paying the fee required.

(4) Any nonresident who hunts or has in his or her possession any wild mammal or wild bird shall first have a nonresident hunting permit as required under the Game Law and rules and regulations of the commission.

(5) Any nonresident who takes or has in his or her possession any wild turtle, mussel, or amphibian shall first have a nonresident fishing permit as required under the Game Law and rules and regulations of the commission.

(6) Except as provided in this section and sections 37-407 and 37-418, it shall be unlawful for any nonresident to trap or attempt to trap or to harvest fur or attempt to harvest fur from any wild mammal.

(7)(a) Any person violating this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least fifty dollars for failure to hold the appropriate stamp under subdivision (1)(c) of this section, at least one hundred dollars for failure to hold a fishing permit, at least one hundred fifty

dollars for failure to hold a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for failure to hold an antelope permit, at least five hundred dollars for failure to hold an elk permit, and at least one thousand dollars for failure to hold a mountain sheep permit.

(b) If the offense is failure to hold a hunting, fishing, fur-harvesting, deer, turkey, or antelope permit as required, unless issuance of the required permit is restricted so that permits are not available, the court shall require the offender to purchase the required permit and exhibit proof of such purchase to the court.

Source: Laws 1929, c. 112, II, § 13, p. 412; C.S.1929, § 37-213; Laws 1937, c. 89, § 4, p. 292; Laws 1941, c. 72, § 3, p. 301; C.S.Supp.,1941, § 37-213; R.S.1943, § 37-213; Laws 1949, c. 102, § 2, p. 280; Laws 1957, c. 139, § 5, p. 466; Laws 1959, c. 149, § 2, p. 565; Laws 1959, c. 150, § 4, p. 571; Laws 1959, c. 154, § 1, p. 580; Laws 1961, c. 169, § 2, p. 502; Laws 1961, c. 171, § 1, p. 511; Laws 1965, c. 194, § 2, p. 592; Laws 1965, c. 197, § 1, p. 598; Laws 1967, c. 216, § 5, p. 581; Laws 1972, LB 777, § 2; Laws 1973, LB 331, § 3; Laws 1977, LB 40, § 176; Laws 1978, LB 75, § 1; Laws 1979, LB 435, § 1; Laws 1979, LB 553, § 2; Laws 1981, LB 72, § 9; Laws 1987, LB 105, § 4; Laws 1987, LB 171, § 1; Laws 1989, LB 34, § 11; Laws 1989, LB 127, § 1; Laws 1993, LB 235, § 10; Laws 1996, LB 584, § 5; R.S.Supp.,1996, § 37-213; Laws 1998, LB 922, § 121; Laws 1999, LB 176, § 23; Laws 1999, LB 404, § 23; Laws 2003, LB 305, § 8; Laws 2005, LB 162, § 3; Laws 2009, LB105, § 7; Laws 2011, LB41, § 5.

Cross References

Predatory animals, subject to destruction, see sections 23-358 and 81-2,236.

37-413 Firearm hunter education program; commission issue certificate; hunting, lawful when; apprentice hunter education exemption certificate; fee.

(1) For the purpose of establishing and administering a mandatory firearm hunter education program for persons twelve through twenty-nine years of age who hunt with a firearm or air gun any species of game, game birds, or game animals, the commission shall provide a program of firearm hunter education training leading to obtaining a certificate of successful completion in the safe handling of firearms and shall locate and train volunteer firearm hunter education instructors. The program shall provide instruction in the areas of safe firearms use, shooting and sighting techniques, hunter ethics, game identification, and conservation management. The commission shall issue a firearm hunter education certificate of successful completion to persons having satisfactorily completed a firearm hunter education course accredited by the commission and shall print, purchase, or otherwise acquire materials as necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such programs.

(2) It shall be unlawful for any person twenty-nine years of age or younger to hunt with a firearm or air gun any species of game, game birds, or game animals except:

(a) A person under the age of twelve years who is accompanied as described in subsection (4) of this section;

(b) A person twelve through twenty-nine years of age who has on his or her person proof of successful completion of a hunter education course as described in subsection (1) of this section or a hunter education course issued by the person's state or province of residence or by an accredited program recognized by the commission;

(c) A person twelve through twenty-nine years of age who has on his or her person the appropriate hunting permit and an apprentice hunter education exemption certificate issued by the commission pursuant to subsection (3) of this section and who is accompanied as described in subsection (4) of this section; or

(d) A person who has a developmental disability, who holds the appropriate hunting permit and a license-purchase exemption certificate issued pursuant to section 37-404.01, and who is accompanied as described in subsection (4) of this section.

(3) An apprentice hunter education exemption certificate may be issued to a person twelve through twenty-nine years of age, once during such person's lifetime with one renewal, upon payment of a fee of five dollars and shall expire at midnight on December 31 of the year for which the apprentice hunter education exemption certificate is issued. The commission may adopt and promulgate rules and regulations allowing for the issuance of apprentice hunter education exemption certificates. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the State Game Fund.

(4) For purposes of this section, accompanied means under the direct supervision of a person who is: (a) Nineteen years of age or older having a valid hunting permit. If such person is nineteen years of age or older but not older than twenty-nine years of age, he or she shall have also completed the required course of instruction to receive a certificate of completion for hunter education; and (b) at all times in unaided visual and verbal communication of persons who have a developmental disability and who are authorized under section 37-404.01 or no more than two persons having an apprentice hunter education exemption certificate. This subsection does not prohibit the use by such person nineteen years of age or older of ordinary prescription eyeglasses or contact lenses or ordinary hearing instruments.

Source: Laws 1969, c. 766, § 1, p. 2903; Laws 1974, LB 865, § 1; Laws 1996, LB 584, § 1; R.S.Supp., 1996, § 37-104; Laws 1998, LB 922, § 123; Laws 2001, LB 111, § 3; Laws 2003, LB 305, § 9; Laws 2008, LB690, § 1; Laws 2009, LB195, § 4; Laws 2010, LB871, § 1; Laws 2014, LB699, § 4.
Effective date April 3, 2014.

37-414 Bow hunter education program; certificate; issuance; hunting, lawful; when.

(1) The commission shall establish and administer a bow hunter education program providing instruction in the safe use of bow hunting equipment, the fundamentals of bow hunting, shooting and hunting techniques, game identification, conservation management, and hunter ethics. When establishing such a program, the commission shall locate and train volunteers as bow hunter education instructors. The commission shall issue a certificate of successful completion to any person who satisfactorily completes a bow hunter education program accredited by the commission and shall print, purchase, or otherwise

acquire materials necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such program.

(2) A person twelve through twenty-nine years of age who is hunting antelope, deer, elk, or mountain sheep with a bow and arrow or crossbow pursuant to any provision of sections 37-447 to 37-453 shall (a) have on his or her person proof of successful completion of a bow hunter education course issued by his or her state or province of residence or by an accredited program recognized by the commission, (b) have on his or her person the appropriate hunting permit and an apprentice hunter education exemption certificate issued by the commission pursuant to subsection (3) of section 37-413 and be accompanied as described in subsection (4) of section 37-413, or (c) hold the appropriate hunting permit and a license-purchase exemption certificate issued pursuant to section 37-404.01 if required pursuant to such section.

Source: Laws 1991, LB 403, § 1; Laws 1996, LB 584, § 2; Laws 1997, LB 107, § 1; R.S.Supp., 1997, § 37-105; Laws 1998, LB 922, § 124; Laws 2001, LB 111, § 4; Laws 2003, LB 305, § 10; Laws 2007, LB299, § 3; Laws 2008, LB690, § 2; Laws 2014, LB699, § 5. Effective date April 3, 2014.

37-415 Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fur-harvesting, fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime fur-harvesting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime hunting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime fishing permit shall be not more than three hundred forty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than five hundred ninety-eight dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than twelve hundred fifty dollars, the fee for a nonresident lifetime fishing permit shall be not more than eight hundred fifty dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed. The fee for a replacement shall be not less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB 176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2; Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1; Laws 2009, LB105, § 8.

37-417 Lifetime permits; fees; disposition.

Fees received for lifetime permits under the Game Law shall be credited to the State Game Fund. Twenty-five percent of the fees for lifetime permits shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission.

Source: Laws 1983, LB 173, § 3; Laws 1995, LB 7, § 32; R.S.Supp.,1996, § 37-202.03; Laws 1998, LB 922, § 127; Laws 2009, LB105, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

37-420 Hunting and fishing permit; veterans; exempt from payment of fees, when; special permits; limitations.

(1) Any veteran who is a legal resident of the State of Nebraska shall, upon application and without payment of any fee, be issued a combination fishing and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp if the veteran:

(a) Was discharged or separated with a characterization of honorable or general (under honorable conditions); and

(b)(i) Is rated by the United States Department of Veterans Affairs as fifty percent or more disabled as a result of service in the armed forces of the United States; or

(ii) Is receiving a pension from the department as a result of total and permanent disability, which disability was not incurred in the line of duty in the military service.

(2) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

(3) All permits issued without the payment of any fees pursuant to this section shall be perpetual and become void only upon termination of eligibility as provided in this section.

(4) The commission may adopt and promulgate rules and regulations necessary to carry out this section.

(5) Permits issued under subdivision (3) of this section as it existed prior to January 1, 2006, shall not expire as provided in section 37-421.

Source: Laws 1957, c. 143, § 1, p. 479; Laws 1959, c. 155, § 1, p. 582; Laws 1965, c. 198, § 1, p. 600; Laws 1967, c. 216, § 7, p. 583; Laws 1972, LB 1204, § 1; Laws 1973, LB 138, § 1; Laws 1979, LB 434, § 2; Laws 1991, LB 2, § 5; Laws 1993, LB 235, § 11; R.S.1943, (1993), § 37-214.03; Laws 1998, LB 922, § 130; Laws 2005, LB 54, § 6; Laws 2005, LB 162, § 6; Laws 2005, LB 227, § 2; Laws 2011, LB41, § 6.

37-421 Combination hunting and fishing permits; stamps; persons eligible; special permits, limitation.

(1) The commission may issue an annual combination fishing and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp upon application and payment of a fee of five dollars to (a) any Nebraska resident who is a veteran, who is sixty-four years of age or older, and who was discharged or separated with a characterization of honorable or general (under honorable conditions) or (b) any Nebraska resident who is sixty-nine years of age or older.

(2) A permit issued as provided in this section shall expire as provided in subdivision (3)(a) of section 37-405. Permits issued under this section as it existed before January 1, 2006, shall not expire as provided in section 37-405.

(3) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

(4) The commission may adopt and promulgate rules and regulations necessary to carry out this section.

Source: Laws 1972, LB 1204, § 6; Laws 1973, LB 138, § 2; Laws 1975, LB 79, § 2; Laws 1979, LB 434, § 3; Laws 1993, LB 235, § 12; R.S.1943, (1993), § 37-214.04; Laws 1998, LB 922, § 131; Laws 2005, LB 162, § 7; Laws 2005, LB 227, § 3; Laws 2011, LB41, § 7.

37-421.01 Military deployment; permits; stamps; conditions; fee.

(1) Notwithstanding any provision of section 37-407 to the contrary, a Nebraska resident who is deployed out of state with a branch of the United States military or has been so deployed within the last twelve months at the time of application shall be entitled to receive an annual combination fishing and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp on a one-time basis upon returning to the state if the resident:

(a) Submits an application to the commission with a fee of five dollars; and

(b) Provides to the commission evidence of the resident's deployment out of state.

(2)(a) Notwithstanding any provision of section 37-447, 37-449, 37-450, 37-451, or 37-457 to the contrary, a Nebraska resident who purchased a big game permit and who was deployed out of state with a branch of the United States military for the entire season of the hunt and who was unable to use the

permit shall be entitled to receive a discounted permit on a one-time basis upon returning to the state if the resident provides to the commission evidence of deployment. Alternatively, the member of the military may request a refund of the amount paid for a big game permit and the commission shall pay such amount.

(b) For purposes of this subsection, big game means antelope, deer, elk, mountain sheep, and wild turkeys.

(c) The commission shall establish a fee of five dollars for the discounted permits authorized in this subsection.

(3) The commission may authorize electronic issuance of the discounted permits authorized under this section.

(4) The commission may adopt and promulgate rules and regulations that set forth the procedures for applying for, and the issuance of, the discounted permits authorized in this section, including what constitutes evidence of deployment to qualify for the permits.

Source: Laws 2005, LB 121, § 1; Laws 2011, LB41, § 8.

37-422 Special daily fishing permits; fee; form; requirements; commission; establish; educational fishing project permits.

(1) The commission may require special daily fishing permits on areas designated by it and subject to intensive fishery management. Such permits may be vended by mechanical or electronic methods. The commission may establish the fee, form, and requirements of such special daily fishing permit, and establish rules and regulations and commission orders pursuant to section 37-314 governing seasons, limits, methods of taking, open or closed waters, and such other regulations and commission orders as it deems necessary on such designated areas. Such special daily fishing permit shall be required of any and all persons fishing on the designated area and shall be the only fishing permit required thereon. The commission may only issue the permits authorized by this section on staffed areas or on portions of staffed areas under its ownership or control which are intensively managed or stocked for a high level of fish production.

(2) An educational fishing project permit may be issued to any instructor of a university, college, or high school and his or her students participating in an educational fishing project. Such persons shall be exempt from the payment of any fees provided by the Game Law for the privilege of fishing in Nebraska while participating in the project. Such exemption shall not extend to the privilege of commercial fishing or to the privilege of fishing for any species of fish on which an open season is limited to a restricted number of permits or to special permits for a restricted area. The commission shall adopt and promulgate rules and regulations necessary to carry out this subsection.

Source: Laws 1967, c. 212, § 1, p. 573; R.S.1943, (1993), § 37-204.02; Laws 1998, LB 922, § 132; Laws 1999, LB 176, § 26; Laws 2013, LB499, § 4.

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2)(a) The commission may issue a lifetime habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime habitat stamp shall be twenty times the fee required in subsection (5) of this section for an annual habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(b) The commission may issue a lifetime Nebraska migratory waterfowl stamp upon application and payment of the appropriate fee. The fee for a lifetime Nebraska migratory waterfowl stamp shall be twenty times the fee required in subsection (5) of this section for an annual Nebraska migratory waterfowl stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement Nebraska lifetime migratory waterfowl stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(c) The commission may issue a lifetime aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime aquatic habitat stamp shall be not more than two hundred dollars as established by the commission pursuant to section 37-327. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime aquatic habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(3)(a) The commission may issue a multiple-year habitat stamp upon application and payment of the appropriate fee. The fee for a multiple-year habitat stamp shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement multiple-year habitat stamp may be issued if the original is lost or destroyed.

(b) The commission may issue a multiple-year Nebraska migratory waterfowl stamp upon application and payment of the appropriate fee. The fee for a multiple-year Nebraska migratory waterfowl stamp shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual Nebraska migratory waterfowl stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement Nebraska multiple-year migratory waterfowl stamp may be issued if the original is lost or destroyed.

(c) The commission may issue a multiple-year aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a multiple-year aquatic habitat stamp shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement multiple-year aquatic habitat stamp may be issued if the original is lost or destroyed.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5)(a) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp.

(b) An annual habitat stamp shall be issued upon the payment of a fee of twenty dollars per stamp. A multiple-year habitat stamp shall be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty dollars times the number of years the multiple-year permit is valid.

(c) An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of ten dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits, a fee of not more than ten dollars times the number of years the multiple-year fishing permit or a multiple-year combination hunting and fishing permit is valid, and a fee of not more than two hundred dollars for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund.

(d) An annual Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. A multiple-year Nebraska migratory waterfowl stamp may only be issued in conjunction with a

multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty dollars times the number of years the multiple-year permit is valid.

(e) The commission shall establish the fees pursuant to section 37-327.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp., 1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws 2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2; Laws 2009, LB105, § 10; Laws 2011, LB41, § 9.

37-427 Stamps; nontransferable; expiration.

The habitat stamp, aquatic habitat stamp, or Nebraska migratory waterfowl stamp required by section 37-426 is not transferable. The lifetime habitat stamp, the lifetime aquatic habitat stamp, and the lifetime Nebraska migratory waterfowl stamp do not expire. A multiple-year stamp expires at midnight on December 31 in the last year for which the multiple-year stamp is valid. A habitat stamp purchased for a permit which is valid into the next calendar year expires when the permit expires. Any other stamp expires at midnight on December 31 in the year for which the stamp is issued.

Source: Laws 1976, LB 861, § 8; Laws 1983, LB 174, § 2; Laws 1996, LB 584, § 10; R.S.Supp., 1996, § 37-216.02; Laws 1998, LB 922, § 137; Laws 1999, LB 176, § 28; Laws 2001, LB 111, § 7; Laws 2003, LB 305, § 12; Laws 2005, LB 162, § 9; Laws 2007, LB299, § 5; Laws 2011, LB41, § 10.

37-431 Nebraska Habitat Fund; Nebraska Aquatic Habitat Fund; created; use; investment; stamps; fees; disposition; duties of officials; violation; penalty.

(1)(a) The Nebraska Habitat Fund is created. The commission shall remit fees received for annual and multiple-year habitat stamps and annual and multiple-year Nebraska migratory waterfowl stamps to the State Treasurer for credit to the Nebraska Habitat Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Up to twenty-five percent of the annual receipts of the fund may be spent by the commission to provide access to private wildlife lands and habitat areas, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations of the Legislature for its approval.

(b) Fees received for lifetime habitat stamps and lifetime Nebraska migratory waterfowl stamps under the Game Law shall be credited to the Nebraska Habitat Fund. Twenty-five percent of the fees for such stamps shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(2)(a) The Nebraska Aquatic Habitat Fund is created. The commission shall remit fees received for annual and multiple-year aquatic habitat stamps and

one dollar of the one-day fishing permit fee as provided in section 37-426 to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Up to thirty percent of the annual receipts of the fund may be spent by the commission to provide public waters angler access enhancements and to provide funding for the administration of programs related to aquatic habitat and public waters angler access enhancements, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations and the Committee on Natural Resources of the Legislature for their approval.

(b) Fees received for lifetime aquatic habitat stamps shall be credited to the Nebraska Aquatic Habitat Fund and shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(3) The secretary of the commission and any county clerk or public official designated to sell habitat stamps, aquatic habitat stamps, or Nebraska migratory waterfowl stamps shall be liable upon their official bonds or equivalent commercial insurance policy for failure to remit the money from the sale of the stamps, as required by sections 37-426 to 37-433, coming into their hands. Any agent who receives stamp fees and who fails to remit the fees to the commission within a reasonable time after demand by the commission shall be liable to the commission in damages for double the amount of the funds wrongfully withheld. Any agent who purposefully fails to remit such fees with the intention of converting them is guilty of theft. The penalty for such violation shall be determined by the amount converted as specified in section 28-518.

Source: Laws 1976, LB 861, § 13; Laws 1983, LB 174, § 7; Laws 1996, LB 584, § 15; R.S.Supp., 1996, § 37-216.07; Laws 1998, LB 922, § 141; Laws 1999, LB 176, § 31; Laws 2001, LB 111, § 8; Laws 2004, LB 884, § 19; Laws 2005, LB 162, § 12; Laws 2007, LB299, § 6; Laws 2009, LB105, § 11; Laws 2011, LB41, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

37-432 Stamps; money received from fees; administered by commission; purposes.

(1) All money received from the sale of habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition of, on a willing-seller willing-buyer basis only, leasing of, development of, management of, enhancement of, access to, and taking of easements on wildlife lands and habitat areas. Such funds may be used in whole or in part for the matching of federal funds. Up to twenty-five percent of the money received from the sale of habitat stamps may be used to provide access to private wildlife lands and habitat areas.

(2) All money received from the sale of aquatic habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission and shall be used for the maintenance and restoration of existing aquatic habitat if maintenance and restoration is practicable, for the enhancement of existing

aquatic habitat, for public waters angler access enhancements, and for administration of programs related to aquatic habitat and public waters angler access enhancements. Such funds may be used in whole or in part for the matching of federal funds. Up to thirty percent of the money received from the sale of aquatic habitat stamps may be used to provide public waters angler access enhancements and to provide funding for administration of programs related to aquatic habitat and public waters angler access enhancements.

(3) All money received from the sale of Nebraska migratory waterfowl stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition on a willing-seller willing-buyer basis only, leasing, development, management, and enhancement of and taking of easements on migratory waterfowl habitat. Such funds may be used in whole or in part for the matching of federal funds.

Source: Laws 1976, LB 861, § 14; Laws 1983, LB 174, § 8; Laws 1996, LB 584, § 16; R.S.Supp.,1996, § 37-216.08; Laws 1998, LB 922, § 142; Laws 2005, LB 162, § 13; Laws 2009, LB105, § 12.

37-433 Violations; penalty; affirmative defense.

Unless otherwise provided in sections 37-426 to 37-433, any person who violates any provision of sections 37-426 to 37-433 or who violates or fails to comply with any rule or regulation thereunder shall be guilty of a Class V misdemeanor and shall be fined at least fifty dollars upon conviction.

It shall be an affirmative defense to prosecution for any violation of sections 37-426 to 37-433 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Source: Laws 1976, LB 861, § 15; Laws 1977, LB 41, § 7; Laws 1983, LB 174, § 9; Laws 1996, LB 584, § 17; R.S.Supp.,1996, § 37-216.09; Laws 1998, LB 922, § 143; Laws 2009, LB105, § 13.

37-438 Annual and temporary permits; fees.

(1) The commission shall devise permits in two forms: Annual and temporary.

(2) The annual permit may be purchased by any person and shall be valid through December 31 in the year for which the permit is issued. The fee for the annual permit for a resident motor vehicle shall be not more than twenty-five dollars per permit. The fee for the annual permit for a nonresident motor vehicle shall not be more than thirty dollars. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(3) A temporary permit may be purchased by any person and shall be valid until noon of the day following the date of issue. The fee for the temporary permit for a resident motor vehicle shall be not more than five dollars. The fee for the temporary permit for a nonresident motor vehicle shall not be more than six dollars. The commission shall establish such fees by the adoption and promulgation of rules and regulations. The commission may issue temporary permits which are either valid for any area or valid for a single area.

Source: Laws 1977, LB 81, § 5; Laws 1978, LB 742, § 7; Laws 1980, LB 723, § 3; Laws 1981, LB 74, § 1; Laws 1983, LB 199, § 1; Laws 1993, LB 235, § 32; R.S.1943, (1993), § 37-1105; Laws 1998, LB

922, § 148; Laws 1999, LB 176, § 35; Laws 2003, LB 122, § 1; Laws 2005, LB 162, § 14; Laws 2008, LB1162, § 3; Laws 2011, LB421, § 1.

37-440 Display and issuance of permits; where procured; clerical fee.

(1) The commission shall prescribe the type and design of permits and the method for displaying permits on the driver's side of the windshield of motor vehicles. The commission may provide for the electronic issuance of permits and may enter into contracts to procure necessary services and supplies for the electronic issuance of permits.

(2) The permits may be procured from the central and district offices of the commission, at areas of the Nebraska state park system where commission offices are maintained, from self-service vending stations at designated park areas, from designated commission employees, through Internet sales from the commission's web site, from appropriate offices of county government, and from various private persons, firms, or corporations designated by the commission as permit agents. The commission and county offices or private persons, firms, or corporations designated by the commission as permit agents shall be entitled to collect and retain a fee of not more than one dollar, as established by the commission pursuant to section 37-327, for each permit as reimbursement for the clerical work of issuing the permits and remitting therefor. The commission shall be entitled to collect and retain a fee of one dollar for each permit sold through its web site as reimbursement for the clerical work and postage associated with issuing the permit.

Source: Laws 1977, LB 81, § 8; Laws 1980, LB 723, § 5; Laws 1993, LB 235, § 34; R.S.1943, (1993), § 37-1108; Laws 1998, LB 922, § 150; Laws 1999, LB 176, § 37; Laws 2002, LB 1003, § 21; Laws 2009, LB105, § 14; Laws 2011, LB421, § 2.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 to prescribe limitations for the hunting, transportation, and possession of deer. The commission may offer multiple-year permits or combinations of permits at reduced rates. The commission may specify by rule and regulation the information to be required on applications for such permits. Rules and regulations for the hunting, transportation, and possession of deer may include, but not be limited to, rules and regulations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such rules and regulations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be allocated in an impartial manner. Whenever the commission

deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine eligibility to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than two hundred fourteen dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section.

(b) The fee for a statewide buck-only permit shall be no more than two and one-half times the amount of a regular deer permit. The commission may provide different fees for different species.

(5)(a) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission.

(b) In management units specified by the commission, the commission may issue nonresident permits after resident preference has been provided by allocating at least eighty-five percent of the available permits to residents. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp., 1997, § 37-215; Laws 1998, LB 922, § 157; Laws

1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15; Laws 2013, LB94, § 1; Laws 2013, LB499, § 5.

37-448 Special deer depredation season; extension of existing deer hunting season; permit; issuance; fee; free permits; when issued.

(1) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate, by order, special deer depredation seasons or extensions of existing deer hunting seasons. The secretary may designate a depredation season or an extension of an existing deer hunting season whenever he or she determines that deer are causing excessive property damage. The secretary shall specify the number of permits to be issued, the species of deer allowed to be taken, the bag limit for such species including deer for donation in accordance with the deer donation program established pursuant to sections 37-1501 to 37-1510, the beginning and ending dates for the depredation season or hunting season extension, shooting hours, the length of the depredation season or hunting season extension, and the geographic area in which hunting will be permitted. Hunting during a special depredation season or hunting season extension shall be limited to residents, and the rules and regulations shall allow use of any weapon permissible for use during the regular deer season.

(2) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for a special depredation season permit. The commission shall use the income from the sale of special depredation season permits for abatement of damage caused by deer. The commission shall also provide for an unlimited number of free permits for the taking of antlerless deer upon request to any person owning or operating at least twenty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of any such person as defined in subdivision (2)(a) of section 37-455. A free permit shall be valid only within such area and only during the designated deer depredation season. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a regular season permit.

Source: Laws 1998, LB 922, § 158; Laws 2008, LB1162, § 4; Laws 2010, LB836, § 2; Laws 2012, LB928, § 3; Laws 2013, LB499, § 6.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.

(1) The commission may issue permits for hunting antelope and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer multiple-year permits or combinations of permits at reduced rates.

(2) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than one hundred forty-nine

dollars and fifty cents for nonresidents for each permit issued under this section except as provided in subsection (4) of this section.

(3) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth antelope permit.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8; Laws 2009, LB105, § 16.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than eight dollars and fifty cents for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred forty-nine dollars and fifty cents for each resident elk permit issued and not to exceed three times such amount for each nonresident elk permit issued.

(3) An applicant shall not be issued a resident elk permit that allows the harvest of an antlered elk more than once every five years. A person may only harvest one antlered elk in his or her lifetime except when harvesting an antlered elk with a limited permit to hunt elk pursuant to subdivision (1)(b) of section 37-455 or an auction or lottery permit pursuant to section 37-455.01.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17; Laws 2011, LB41, § 12; Laws 2013, LB94, § 2.

37-451 Permit to hunt mountain sheep; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting mountain sheep and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in subsection (1) of section 37-447 and section 37-452 for hunting deer. Such rules and regulations shall include provisions allowing persons who find dead mountain sheep, or

any part of a mountain sheep, to turn over to the commission such mountain sheep or part of a mountain sheep. The commission may dispose of such mountain sheep or part of a mountain sheep as it deems reasonable and prudent. Except as otherwise provided in this section, the permits shall be issued to residents of Nebraska.

(2) The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than twenty-five dollars for permits issued only to residents. Any number of resident-only permits, as authorized by the commission, shall be awarded by random drawing to eligible applicants. No permit fee shall be charged in addition to the nonrefundable application fee.

(3) No more than one additional permit may be authorized and issued pursuant to an auction open to residents and nonresidents. The auction shall be conducted according to rules and regulations prescribed by the commission. Any money derived from the sale of permits by auction shall be used only for perpetuation and management of mountain sheep, elk, and deer.

(4) If the commission determines to limit the number of permits issued for any or all management units, the commission shall by rule and regulation determine eligibility requirements for the permits.

(5) A person may obtain only one mountain sheep permit in his or her lifetime.

(6) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 161; Laws 2008, LB1162, § 5; Laws 2009, LB105, § 18.

37-452 Hunting of antelope, elk, mountain sheep, mountain lion, or deer; age requirements.

(1) No person shall hunt antelope, elk, mountain sheep, or mountain lions unless such person is at least twelve years of age, and any person who is twelve through fifteen years of age shall only hunt antelope, elk, mountain sheep, or mountain lions when supervised by a person nineteen years of age or older having a valid hunting permit.

(2) No person shall hunt deer unless such person is at least ten years of age, and any person who is ten through fifteen years of age shall only hunt deer when supervised by a person nineteen years of age or older having a valid hunting permit.

(3) A person nineteen years of age or older having a valid hunting permit shall not supervise more than two persons while hunting deer, antelope, elk, mountain sheep, or mountain lions at the same time.

Source: Laws 1998, LB 922, § 162; Laws 1999, LB 176, § 43; Laws 2005, LB 162, § 17; Laws 2007, LB299, § 10; Laws 2008, LB690, § 3; Laws 2012, LB928, § 4.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder and his or her immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the

issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. A permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. The commission may adopt and promulgate rules and regulations that create requirements for documentation to designate one qualifying landowner among partners of a partnership or officers or shareholders of a corporation that owns or leases eighty acres or more of farm or ranch land for agricultural purposes and among beneficiaries of a trust that owns or leases eighty acres or more of farm or ranch land for agricultural purposes. Only a person who is a qualifying landowner or leaseholder and such person's immediate family may apply for a limited permit. An applicant may apply for no more than one permit per species per year except as otherwise provided in the rules and regulations of the commission. For purposes of this section, immediate family means and is limited to a husband and wife and their children or siblings sharing ownership in the property.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may pass commission orders for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch

divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(5) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws

1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19; Laws 2013, LB94, § 3; Laws 2013, LB499, § 7.

37-455.01 Permit to hunt antelope, elk, deer, and wild turkey; auction or lottery permits; issuance; fee.

The commission may issue auction or lottery permits for up to five permits each for antelope and elk and up to twenty-five permits each for deer and wild turkey during the calendar year. Included in that number are single species and combination species permits and shared revenue permits that may be issued by the commission. The shared revenue permits may be issued under agreements with nonprofit conservation organizations and may be issued by auction or lottery, with the commission receiving at least eighty percent of any profit realized. The commission shall by rule and regulation adopt limitations for any such permits that are issued. The auction or lottery shall be conducted according to rules and regulations adopted and promulgated by the commission. The commission shall adopt and promulgate rules and regulations to set a nonrefundable lottery application fee for each type of single species or combination species permit offered directly through the commission.

Source: Laws 2005, LB 162, § 18; Laws 2009, LB105, § 20.

37-456 Limited antelope or elk permit; issuance; limitation.

The issuance of limited antelope permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such antelope management unit. The issuance of limited elk permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such elk management unit.

Source: Laws 1974, LB 865, § 2; Laws 1975, LB 270, § 2; Laws 1985, LB 557, § 7; Laws 1996, LB 584, § 8; R.S.Supp.,1996, § 37-215.08; Laws 1998, LB 922, § 166; Laws 2009, LB105, § 21.

37-457 Hunting wild turkey; permit required; fee; issuance.

(1) The commission may issue permits for hunting wild turkey and prescribe and establish regulations and limitations for the hunting, transportation, and possession of wild turkey. The commission may offer multiple-year permits or combinations of permits at reduced rates. The number of such permits may be limited as provided by the regulations of the commission, but the permits shall be disposed of in an impartial manner. Such permits may be issued to allow wild turkey hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting would not be detrimental to the proper preservation of wildlife in such forest, reserves, or areas.

(2) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-three dollars for residents and not more than ninety-five dollars for nonresidents for each permit issued under this section except as provided in subsection (5) of this section.

(3) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations

adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units.

(4) The provisions of section 37-447 for the distribution of deer permits also may apply to the distribution of wild turkey permits. No permit to hunt wild turkey shall be issued without payment of the fee required by this section.

(5) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth wild turkey permit.

Source: Laws 1961, c. 172, § 1, p. 513; Laws 1969, c. 292, § 2, p. 1064; Laws 1976, LB 861, § 16; Laws 1993, LB 235, § 17; R.S.1943, (1993), § 37-227; Laws 1998, LB 922, § 167; Laws 1999, LB 176, § 44; Laws 2003, LB 306, § 7; Laws 2005, LB 162, § 19; Laws 2007, LB299, § 11; Laws 2009, LB105, § 22.

37-460 Repealed. Laws 2011, LB 41, § 31.

37-461 Muskrats or beavers; permit to destroy; violation; penalty.

If any dam, canal, drainage ditch, irrigation ditch, private fish pond, aquaculture facility, artificial waterway, railroad embankment, or other property is being damaged or destroyed by muskrats or beavers, the commission may issue a permit to the person who owns or controls the property allowing the person or his or her designee to take or destroy such muskrats or beavers. The muskrats, beavers, or parts thereof taken under the authority of such permit shall not be sold or used unless the permitholder also possesses a fur-harvesting permit that is current or valid at the time of the sale or use. The commission may adopt and promulgate rules and regulations in connection with the issuance of such permits. Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1998, LB 922, § 171; Laws 2011, LB41, § 13.

37-464 Possession of fur, pelt, or carcass; prohibited acts.

Except as otherwise provided in the Game Law, it shall be unlawful for any person, other than a person holding a fur-harvesting permit, a captive wildlife permit, a fur buyer's permit, or a permit issued pursuant to section 37-461, with regard to beaver or muskrat taken pursuant to such permit, and officers and employees of the commission, to possess the raw fur, pelt, or carcass of any fur-bearing animal protected by the Game Law.

Source: Laws 1929, c. 112, III, § 7, p. 418; C.S.1929, § 37-307; R.S.1943, § 37-306; Laws 1972, LB 1032, § 227; Laws 1977, LB 40, § 181; Laws 1989, LB 34, § 16; R.S.1943, (1993), § 37-306; Laws 1998, LB 922, § 174; Laws 1999, LB 176, § 48; Laws 2011, LB41, § 14.

37-472 Permit to kill mountain lions; eligibility.

(1) The commission may issue a permit for the killing of one or more mountain lions which are preying on livestock or poultry. The permit shall be valid for up to thirty days and shall require the commission to be notified immediately by the permitholder after the killing of a mountain lion and shall require the carcass to be transferred to the commission.

(2) To be eligible for a permit under this section, a farmer or rancher owning or operating a farm or ranch shall contact the commission to confirm that livestock or poultry on his or her property or property under his or her control has been subject to depredation by a mountain lion. The commission shall confirm that the damage was caused by a mountain lion prior to issuing the permit. The farmer or rancher shall be allowed up to thirty days, as designated by the commission, to kill the mountain lion on such property and shall notify the commission immediately after the killing of a mountain lion and arrange with the commission to transfer the mountain lion to the commission.

(3) The commission may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2010, LB836, § 5.

37-473 Permit for hunting mountain lions; application fee; auction; use of proceeds.

(1) The commission may issue permits for hunting mountain lions and may adopt and promulgate rules and regulations therefor within the limitations prescribed in subsection (1) of section 37-447 and section 37-452 for hunting deer. Any authorized permits shall be issued to residents of Nebraska, except that permits issued by auction may be issued to nonresidents.

(2) The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than twenty-five dollars for permits issued only to residents. Any number of resident-only permits, as authorized by the commission, shall be awarded by random drawing to eligible applicants. No permit fee shall be charged in addition to the nonrefundable application fee.

(3) No more than one additional permit may be authorized and issued pursuant to an auction open to residents and nonresidents. The auction shall be conducted according to rules and regulations prescribed by the commission. Any money derived from the sale of permits by auction shall be used only for perpetuation and management of mountain lions.

Source: Laws 2012, LB928, § 2.

37-477 Certain animals kept in captivity; permit required; exceptions; rules and regulations.

(1) No person shall keep in captivity in this state any wild birds, any wild mammals, any nongame wildlife in need of conservation as determined by the commission under section 37-805, or any wildlife determined to be an endangered or threatened species under the Endangered Species Act or section 37-806 without first having obtained a permit to do so as provided by section 37-478 or 37-479.

(2) Except as provided in subsection (3) of this section, no person shall keep in captivity in this state any wolf, any skunk, or any member of the families Felidae and Ursidae. This subsection shall not apply to (a) the species *Felis domesticus*, (b) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or any zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America, or (c) any person who holds a captive wildlife permit issued pursuant to section 37-479 and who raises Canada Lynx (*Lynx canadensis*) or bobcats (*Lynx rufus*) solely for the purpose of producing furs for sale to individuals or businesses or

for the purpose of producing breeding stock for sale to persons engaged in fur production.

(3) Any person legally holding in captivity, on March 1, 1986, any animal subject to the prohibition contained in subsection (2) of this section shall be allowed to keep the animal for the duration of its life. Such animal shall not be traded, sold, or otherwise disposed of without written permission from the commission.

(4) The commission shall adopt and promulgate rules and regulations governing the purchase, possession, propagation, sale, and barter of wild birds, wild mammals, and wildlife in captivity.

Source: Laws 1957, c. 151, § 1, p. 490; Laws 1971, LB 733, § 9; Laws 1986, LB 558, § 1; Laws 1987, LB 379, § 1; R.S.1943, (1993), § 37-713; Laws 1998, LB 922, § 187; Laws 1999, LB 176, § 56; Laws 2009, LB105, § 23.

37-479 Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-701.03.

(3) It shall be unlawful to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife. Any person violating this subsection shall be guilty of a Class II misdemeanor and upon conviction shall be fined at least one thousand dollars.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp.,1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11; Laws 2009, LB105, § 24.

37-481 Certain wild animals; keeping in captivity; permit not required; when.

Sections 37-477 to 37-480 shall not be construed to require the obtaining of a permit for the purpose of keeping in captivity wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 or for the purpose of purchasing, possessing, propagating, selling, bartering, or otherwise disposing of any wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 by (1) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or any zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America or (2) any circus licensed by the United States Department of Agriculture.

Source: Laws 1957, c. 151, § 5, p. 491; Laws 1969, c. 296, § 1, p. 1069; Laws 1986, LB 558, § 3; R.S.1943, (1993), § 37-717; Laws 1998, LB 922, § 191; Laws 1999, LB 176, § 60; Laws 2009, LB105, § 25.

37-483 Recall pen; captive wildlife permit required; permit.

The construction, operation, and maintenance of a facility commonly known as a recall pen, also known as a recapture pen, which is used for the recapture of marked game birds originating from the holder of a captive wildlife permit in conjunction with dog training or dog trial activities shall be legal if the person owning or controlling such recall pen, prior to the operation thereof, holds a captive wildlife permit and complies with section 37-479. The commission shall adopt and promulgate rules and regulations for the issuance of permits for recall pens and for the possession and use of recall pens. Nothing in this section shall authorize the use of recall pens for the trapping of other wild birds.

Source: Laws 1972, LB 1447, § 2; R.S.1943, (1993), § 37-501.01; Laws 1998, LB 922, § 193; Laws 1999, LB 176, § 63; Laws 2003, LB 306, § 12; Laws 2008, LB1162, § 12; Laws 2011, LB41, § 15.

37-484 Game breeding and controlled shooting area; license; application; fee.

Any person or persons owning, holding, or controlling by lease or otherwise, which possession must be for a term of five or more years, any tract or tracts of land having an area of not less than eighty acres and not more than two thousand five hundred sixty acres who desires to establish a game breeding and controlled shooting area to propagate, preserve, and shoot game birds under the regulations as provided in sections 37-484 to 37-496 shall make application to the commission for a license as provided by such sections. Such application shall be made under oath of the applicant or one of its principal officers if the applicant is an association, club, or corporation and shall be accompanied by a license fee of not more than one hundred forty-nine dollars and fifty cents, as established by the commission pursuant to section 37-327. Any controlled shooting area existing on February 18, 1987, shall continue in operation on the existing acreage until such controlled shooting area license is not renewed or canceled. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 152, § 1, p. 492; Laws 1967, c. 223, § 1, p. 598; Laws 1969, c. 297, § 1, p. 1070; Laws 1987, LB 206, § 1; Laws 1993, LB 235, § 29; Laws 1997, LB 752, § 93; R.S.Supp.,1997, § 37-901; Laws 1998, LB 922, § 194; Laws 2003, LB 306, § 13; Laws 2008, LB1162, § 13; Laws 2011, LB41, § 16.

37-485 License requirements; inspection; issuance.

Upon receipt of the application, the commission shall inspect the area proposed to be licensed described in such application and its premises and facilities. The commission shall also inspect the area where game birds are to be propagated, reared, and liberated and the cover for game birds on such area. The commission shall also ascertain the ability of the applicant to operate a property of this character. If the commission finds (1) that the area is of the size specified in section 37-484, (2) that the area is comprised of one or more tracts and each tract is a distance of no more than two miles from at least one other tract in the proposed area, (3) that the area has the proper requirements for the operation of such a property, (4) that the game birds propagated or released thereon are not likely to be diseased and a menace to other game, (5) that the operation of such property will not work a fraud upon persons who may be permitted to hunt thereon, and (6) that the issuing of the license will otherwise be in the public interest, the commission shall approve such application and issue a game breeding and controlled shooting area license for the operation of such a property on the tract described in such application with the rights and subject to the limitations prescribed in sections 37-484 to 37-496.

Source: Laws 1957, c. 152, § 2, p. 492; Laws 1969, c. 297, § 2, p. 1070; Laws 1989, LB 34, § 49; R.S.1943, (1993), § 37-902; Laws 1998, LB 922, § 195; Laws 2011, LB41, § 17.

37-487 Posting of areas.

Upon receipt of a license under sections 37-484 to 37-496, the licensee shall promptly post such licensed areas according to the requirements prescribed by the commission.

Source: Laws 1957, c. 152, § 4, p. 493; R.S.1943, (1993), § 37-904; Laws 1998, LB 922, § 197; Laws 2011, LB41, § 18.

37-488 Privileges conferred by license; game birds, requirements; marking and transport.

The licensee of any licensed game breeding and controlled shooting area may take or authorize to be taken, within the season fixed and designated and in such numbers as provided in sections 37-484 to 37-496, game birds as specified in rules and regulations of the commission and released on licensed areas during the shooting season as provided in such sections. The commission shall prescribe requirements, in rules and regulations, for the marking and transport of the game birds released.

Source: Laws 1957, c. 152, § 5, p. 493; Laws 1974, LB 766, § 1; Laws 1985, LB 446, § 1; Laws 1993, LB 235, § 30; R.S.1943, (1993), § 37-905; Laws 1998, LB 922, § 198; Laws 2011, LB41, § 19.

37-489 Game birds released, propagated, and taken; record; reports.

For the purpose of sections 37-484 to 37-496, game birds shall be released upon licensed game breeding and controlled shooting areas in numbers regulated by the commission. The licensee shall keep such records and make such

reports as to game birds released, propagated, and taken, at such times and in such manner as may be required by the commission.

Source: Laws 1957, c. 152, § 6, p. 494; R.S.1943, (1993), § 37-906; Laws 1998, LB 922, § 199; Laws 2011, LB41, § 20.

37-490 Closed season.

No person shall hunt any upland game birds and mallard ducks upon such breeding and controlled shooting area except between September 1 and April 1 of each year, except that turkeys may be hunted throughout the open season and dog training or dog trial activities may be permitted as prescribed by rules and regulations of the commission or commission orders.

Source: Laws 1957, c. 152, § 7, p. 494; Laws 1967, c. 224, § 1, p. 599; Laws 1987, LB 206, § 3; R.S.1943, (1993), § 37-907; Laws 1998, LB 922, § 200; Laws 2011, LB41, § 21; Laws 2013, LB499, § 8.

37-492 Commission; rules and regulations; commission orders; limitations upon game breeding and controlled shooting areas.

The commission may adopt and promulgate rules and regulations and pass commission orders for carrying out, administering, and enforcing the provisions of sections 37-484 to 37-496. The commission shall limit the number of areas proposed for licensing so that the total acreage licensed for game breeding and controlled shooting areas in any one county does not exceed two percent of the total acreage of the county in which the areas are sought to be licensed. The commission shall not require distances between boundaries of game breeding and controlled shooting areas to be greater than two miles. No license shall be issued for any area whereon mallard ducks are shot or to be shot if the area lies within three miles of any river or within three miles of any lake with an area exceeding three acres, except that a license may be issued for such area for the shooting of upland game birds only, and the rearing or shooting of mallard ducks thereon is prohibited.

Source: Laws 1957, c. 152, § 10, p. 495; Laws 1969, c. 297, § 3, p. 1071; R.S.1943, (1993), § 37-910; Laws 1998, LB 922, § 202; Laws 2011, LB41, § 22; Laws 2013, LB499, § 9.

37-497 Raptors; protection; management; falconry permit; captive propagation permit; raptor collecting permit; fees.

(1) The commission may take such steps as it deems necessary to provide for the protection and management of raptors.

(2) The commission may issue falconry permits for the taking and possession of raptors for the purpose of practicing falconry. A falconry permit may be issued only to a resident of the state who has paid the fees required in this subsection and has passed a written and oral examination concerning raptors given by the commission or an authorized representative of the commission. The commission shall charge a fee for each permit of not more than seventeen dollars for persons twelve to seventeen years of age and not more than forty-six dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. If the applicant fails to pass the examination, he or she shall not be entitled to reapply for a falconry permit for a period of six months after the date of the examination. A person less than twelve years of age shall not be issued a falconry permit. A person from twelve

to seventeen years of age may be issued a permit only if he or she is sponsored by an adult who has a valid falconry permit and appropriate experience. All falconry permits shall be nontransferable and shall expire three years after the date of issuance. If the commission is satisfied as to the competency and fitness of an applicant whose permit has expired, his or her permit may be renewed without requiring further examination subject to terms and conditions imposed by the commission. The commission shall adopt and promulgate rules and regulations outlining species of raptors which may be taken, captured, or held in possession.

(3) The commission may issue captive propagation permits to allow the captive propagation of raptors. A permit may be issued to a resident of the state who has paid the fee required in this subsection. The fee for each permit shall be not more than two hundred thirty dollars, as established by the commission pursuant to section 37-327. The permit shall be nontransferable, shall expire three years after the date of issuance, and may be renewed under terms and conditions established by the commission. The commission shall authorize the species and the number of each such species which may be taken, captured, acquired, or held in possession. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of captive propagation permits.

(4) The commission may issue raptor collecting permits to nonresidents as prescribed by the rules and regulations of the commission. The fee for a permit shall be not more than two hundred dollars, as established by the commission pursuant to section 37-327. A raptor collecting permit shall be nontransferable. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of raptor collecting permits.

Source: Laws 1971, LB 733, § 1; Laws 1987, LB 154, § 2; Laws 1990, LB 940, § 1; Laws 1993, LB 235, § 28; R.S.1943, (1993), § 37-720; Laws 1998, LB 922, § 207; Laws 2003, LB 306, § 14; Laws 2008, LB1162, § 14; Laws 2011, LB41, § 23.

37-498 Raptors; take or maintain; permit required.

(1) It shall be unlawful for any person to take or attempt to take or maintain a raptor in captivity, except as otherwise provided by law or by rule or regulation of the commission, unless he or she possesses a falconry permit, a captive propagation permit, or a raptor collecting permit as required by section 37-497.

(2) No person shall sell, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen, except as permitted under a falconry or captive propagation permit issued under section 37-497 or the rules and regulations adopted and promulgated by the commission. Nothing in this section shall be construed to permit any sale, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen taken from the wild.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208; Laws 2011, LB41, § 24.

37-499 Repealed. Laws 2011, LB 41, § 31.

37-4,100 Repealed. Laws 2011, LB 41, § 31.

37-4,101 Repealed. Laws 2011, LB 41, § 31.

37-4,102 Repealed. Laws 2011, LB 41, § 31.

37-4,103 Raptors; violations; penalty.

Any person violating any provision of section 37-497 or 37-498 shall be guilty of a Class IV misdemeanor. In addition, the court shall order the revocation of the permit of the offender.

Source: Laws 1971, LB 733, § 7; Laws 1977, LB 40, § 206; Laws 1987, LB 154, § 8; R.S.1943, (1993), § 37-726; Laws 1998, LB 922, § 213; Laws 2011, LB41, § 25.

37-4,107 Bullfrogs; fishing permit required; manner of taking.

Bullfrogs may be taken, possessed, transported, and used under rules and regulations adopted and promulgated by the commission or commission orders setting forth seasons, bag limits, open areas, and manner of taking established by the commission pursuant to section 37-314, by the holder of a fishing permit. In taking bullfrogs, an artificial light may be used.

Source: Laws 1957, c. 139, § 8, p. 468; Laws 1973, LB 331, § 4; R.S.1943, (1993), § 37-226; Laws 1998, LB 922, § 217; Laws 2013, LB499, § 10.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-five dollars for residents. The fee for a nonresident permit to take paddlefish shall be two times the resident permit fee. All fees collected under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12; Laws 2009, LB105, § 26.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section

- 37-501. Game and fish; bag and possession limit; violation; penalty.
 37-503. Game; illegal possession; exception.
 37-504. Violations; penalties; exception.
 37-507. Game bird, game animal, or game fish; abandonment or needless waste; penalty.
 37-512. Transfer of raw fur by carriers; document required; penalty.

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

- 37-513. Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.
 37-514. Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.
 37-523. Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.

§ 37-501

GAME AND PARKS

Section

- 37-524. Aquatic invasive species; wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.
- 37-524.02. Aquatic invasive species; prohibited acts; penalty; impoundment of conveyance.
- 37-524.03. Aquatic invasive species; rules and regulations.
- 37-528. Administration of drugs to wildlife; prohibited acts; violation; penalty; section, how construed; powers of conservation officer.
- (d) FISH AND AQUATIC ORGANISMS
- 37-543. Offenses relating to fish; exceptions; rules and regulations; commission orders; violation; penalty.
- 37-546. Offenses relating to baitfish; violation; penalty.
- 37-547. Aquatic invasive species; wildlife; legislative intent.
- 37-548. Aquatic invasive species; wildlife; prohibited acts; violation; penalty; release, importation, commercial exploitation, and exportation permits; fees; commission; powers and duties.
- (e) DAMAGE BY WILDLIFE
- 37-559. Destruction of predators; permit required; when; mountain lion; actions authorized.
- 37-562. Repealed. Laws 2011, LB 41, § 31.

(a) GENERAL PROVISIONS

37-501 Game and fish; bag and possession limit; violation; penalty.

Except as otherwise provided by the Game Law, rules and regulations of the commission, or commission orders, it shall be unlawful for any person in any one day to take or have in his or her possession at any time a greater number of game birds, game animals, or game fish of any one kind than as established pursuant to section 37-314. Any person violating this section shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least two hundred dollars for violations relating to turkeys, small game animals, or game fish.

Source: Laws 1929, c. 112, III, § 4, p. 416; C.S.1929, § 37-304; Laws 1933, c. 69, § 1, p. 308; Laws 1937, c. 89, § 7, p. 294; C.S.Supp.,1941, § 37-304; R.S.1943, § 37-303; Laws 1989, LB 34, § 13; R.S.1943, (1993), § 37-303; Laws 1998, LB 922, § 221; Laws 2009, LB105, § 27; Laws 2013, LB499, § 11.

37-503 Game; illegal possession; exception.

It shall be unlawful for anyone to have in his or her possession, except during the open season thereon, any unmounted game except as allowed by the Game Law or the rules and regulations adopted and promulgated and commission orders passed by the commission.

Source: Laws 1945, c. 79, § 1(2), p. 295; Laws 1994, LB 1165, § 8; R.S.Supp.,1996, § 37-304.01; Laws 1998, LB 922, § 223; Laws 1999, LB 176, § 66; Laws 2011, LB41, § 26; Laws 2013, LB499, § 12.

37-504 Violations; penalties; exception.

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any elk, deer, antelope, swan, or wild turkey shall be

guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for a violation involving elk and at least two hundred dollars for a violation involving deer, antelope, swan, or wild turkey.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class II misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and, except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

Source: Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28.

37-507 Game bird, game animal, or game fish; abandonment or needless waste; penalty.

Any person who at any time takes any game bird, game animal, or game fish other than baitfish in this state and who intentionally leaves or abandons such bird, animal, or fish or an edible portion thereof resulting in wanton or needless waste or otherwise intentionally allows it or an edible portion thereof to be wantonly or needlessly wasted or fails to dispose thereof in a reasonable and sanitary manner shall be guilty of a Class III misdemeanor.

Source: Laws 1959, c. 150, § 11, p. 575; Laws 1977, LB 40, § 197; R.S.1943, (1993), § 37-525; Laws 1998, LB 922, § 227; Laws 2009, LB105, § 29.

37-512 Transfer of raw fur by carriers; document required; penalty.

Every express company and common carrier, their officers, agents, and servants, and every other person who (1) transfers or carries from one point to another within the state, (2) takes out of the state, or (3) receives, for the purpose of transferring from this state, any raw furs protected by the Game Law, except as permitted in this section, shall be guilty of a Class III misdemeanor. Any express company, railroad, common carrier, or postmaster may receive raw furs protected by the Game Law for transportation from one point to another by express, baggage, or mail when such raw fur is accompanied by a document placed upon the package giving the name of the consignee, the number of his or her fur-harvesting permit, the date of expiration of the permit which must be on or after the date of shipment, and a description of the kind and number of each kind of raw fur in the shipment.

Source: Laws 1929, c. 112, V, § 8, p. 428; C.S.1929, § 37-508; Laws 1933, c. 67, § 2, p. 306; C.S.Supp.,1941, § 37-508; R.S.1943, § 37-508; Laws 1945, c. 78, § 6, p. 291; Laws 1981, LB 72, § 18; Laws 1989, LB 34, § 31; R.S.1943, (1993), § 37-508; Laws 1998, LB 922, § 232; Laws 2011, LB41, § 27.

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES**37-513 Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.**

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars.

(2)(a) Any county may adopt a resolution having the force and effect of law to prohibit the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way as designated by the county.

(b) A person trapping wildlife in a county road right-of-way is not allowed to use traps in the county road right-of-way that are larger than those allowed by the commission as of February 1, 2009, on any land owned or controlled by the commission.

(c) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

Source: Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S.1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572; Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 142, § 4; Laws 1975, LB 220, § 1; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB 922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1; Laws 2009, LB5, § 1; Laws 2009, LB105, § 30.

37-514 Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.

(1) Except as provided in section 37-4,107, it shall be unlawful to hunt any wildlife by projecting or casting the rays of a spotlight, headlight, or other artificial light attached to or used from a vehicle or boat in any field, pasture, woodland, forest, prairie, water area, or other area which may be inhabited by wildlife while having in possession or control, either singly or as one of a group of persons, any firearm or bow and arrow.

(2) Nothing in this section shall prohibit (a) the hunting on foot of raccoon with the aid of a handlight, (b) the hunting of species of wildlife not protected by the Game Law in the protection of property by landowners or operators or their regular employees on land under their control on foot or from a motor vehicle with the aid of artificial light, or (c) the taking of nongame fish by means of bow and arrow from a vessel with the aid of artificial light.

(3) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred fifty dollars upon conviction.

Source: Laws 1998, LB 922, § 234; Laws 1999, LB 176, § 70; Laws 2009, LB105, § 31.

37-523 Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.

(1) It shall be unlawful to hunt with a rifle within a two-hundred-yard radius of an inhabited dwelling or livestock feedlot, to hunt without a rifle or trap any form of wild mammal or wild bird within a one-hundred-yard radius of an inhabited dwelling or livestock feedlot, or to trap within a two-hundred-yard radius of any passage used by livestock to pass under any highway, road, or bridge.

(2) This section shall not prohibit any owner, tenant, or operator or his or her guests from hunting or trapping any form of wild mammal or wild bird within such radius if the area is under his or her ownership or control. This section shall not prohibit duly authorized personnel of any county, city, or village health or animal control department from trapping with a humane live box trap or pursuing any form of wild mammal or wild bird, when conducting such activities within the scope of the authorization, within such radius if the area is under the jurisdiction of the county, city, or village.

(3) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1967, c. 214, § 1, p. 575; Laws 1974, LB 779, § 2; Laws 1983, LB 24, § 1; R.S.1943, (1993), § 37-526; Laws 1998, LB 922, § 243; Laws 2009, LB105, § 32; Laws 2010, LB836, § 3.

37-524 Aquatic invasive species; wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.

(1) It shall be unlawful for any person, partnership, limited liability company, association, or corporation to import into the state or possess aquatic invasive species, the animal known as the San Juan rabbit, or any other species of wild vertebrate animal, including domesticated cervine animals as defined in section 54-701.03, declared by the commission following public hearing and consultation with the Department of Agriculture to constitute a serious threat to

economic or ecologic conditions, except that the commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird or nonnative mammal without written authorization from the commission. Any person, partnership, limited liability company, association, or corporation violating the provisions of this subsection shall be guilty of a Class IV misdemeanor.

(2) Following public hearing and consultation with the Department of Agriculture, the commission may, by rule and regulation, regulate or limit the importation and possession of any aquatic invasive species or wild vertebrate animal, including a domesticated cervine animal as defined in section 54-701.03, which is found to constitute a serious threat to economic or ecologic conditions.

Source: Laws 1957, c. 139, § 20, p. 474; Laws 1967, c. 222, § 1, p. 597; Laws 1973, LB 331, § 7; Laws 1977, LB 40, § 205; Laws 1993, LB 121, § 203; Laws 1993, LB 830, § 9; Laws 1995, LB 718, § 5; R.S.Supp., 1996, § 37-719; Laws 1998, LB 922, § 244; Laws 2012, LB391, § 8.

Cross References

Domesticated Cervine Animal Act, possession of certain animals prohibited, see section 54-2324.

37-524.02 Aquatic invasive species; prohibited acts; penalty; impoundment of conveyance.

(1) No person shall possess, import, export, purchase, sell, or transport aquatic invasive species except when authorized commission personnel or the owner of a conveyance, or a person authorized by such owner, is removing an aquatic invasive species from a conveyance to be killed or immediately disposed of in a manner determined by the commission. The commission shall adopt and promulgate rules and regulations governing the inspection, decontamination, and treatment of conveyances capable of containing or transporting aquatic invasive species.

(2) Any person who (a) fails or refuses to submit to an inspection of a conveyance requested by an authorized inspector or (b) refuses to permit or prevents proper decontamination or treatment of a conveyance as prescribed by the authorized inspector is guilty of a Class III misdemeanor and upon conviction shall be fined not less than five hundred dollars. Such person's conveyance shall also be subject to impoundment.

Source: Laws 2012, LB391, § 6.

37-524.03 Aquatic invasive species; rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out section 37-524.02.

Source: Laws 2012, LB391, § 7.

37-528 Administration of drugs to wildlife; prohibited acts; violation; penalty; section, how construed; powers of conservation officer.

(1) For purposes of this section, drug means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the commission.

(2) Except with written authorization from the secretary of the commission or his or her designee or as otherwise provided by law, a person shall not administer a drug to any wildlife under the jurisdiction of the commission, including, but not limited to, a drug used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

(3) This section does not prohibit the treatment of wildlife to prevent disease or the treatment of sick or injured wildlife by a licensed veterinarian, a holder of a federal migrating bird rehabilitation permit, a holder of a permit regulated under the authority of section 37-316, a holder of a permit regulated under the authority of section 37-4,106, or a holder of a license regulated under the authority of section 37-4,108.

(4) This section shall not be construed to limit employees of agencies of the state or the United States or employees of an animal control facility, animal rescue, or animal shelter licensed under section 54-627 in the performance of their official duties related to public health or safety, wildlife management, or wildlife removal, except that a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection (2) of this section.

(5) A conservation officer may take possession or dispose of any wildlife under the jurisdiction of the commission that the officer reasonably believes has been administered a drug in violation of this section.

(6) A person who violates this section is guilty of a Class IV misdemeanor.

Source: Laws 2009, LB105, § 33; Laws 2010, LB910, § 2.

(d) FISH AND AQUATIC ORGANISMS

37-543 Offenses relating to fish; exceptions; rules and regulations; commission orders; violation; penalty.

(1) It shall be unlawful for any person to take any fish, except as provided in this section, by means other than fishing with hook and line.

(2) It shall be unlawful for any person to use, while fishing in this state in any lake, pond, or reservoir or in their inlets, outlets, and canals within one-half mile of such lake, pond, or reservoir, more than two lines, and neither line shall have more than two hooks. This subsection shall not apply to ice fishing.

(3) It shall be unlawful for any person to take any fish by snagging fish externally by hook and line, except in the Missouri River, as provided by rules and regulations of the commission.

(4) It shall be unlawful for any person to use, while fishing in any waters in this state, a line having more than five hooks thereon or lines having more than fifteen hooks in the aggregate. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

(5) Nongame fish may be taken by spearing or by bow and arrow as provided by rules and regulations of the commission.

(6) Sport fish may be taken by bow and arrow as provided by rules and regulations of the commission.

(7) The commission may adopt and promulgate rules and regulations to allow, control, regulate, or prohibit the use of seines, nets, and other devices and methods in the taking of fish. The commission may adopt and promulgate

rules and regulations as to the method of taking, possession, transporting, or selling and pass commission orders regarding bag limits and size limits of all species of fish.

(8) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 2, p. 426; C.S.1929, § 37-502; Laws 1931, c. 72, § 1, p. 193; Laws 1939, c. 40, § 1, p. 197; Laws 1941, c. 72, § 7, p. 304; C.S.Supp.,1941, § 37-502; R.S.1943, § 37-502; Laws 1945, c. 80, § 1, p. 298; Laws 1955, c. 134, § 1, p. 384; Laws 1957, c. 147, § 1, p. 484; Laws 1959, c. 159, § 1, p. 590; Laws 1961, c. 169, § 6, p. 504; Laws 1963, c. 205, § 1, p. 658; Laws 1963, c. 206, § 1, p. 661; Laws 1965, c. 204, § 1, p. 608; Laws 1967, c. 216, § 9, p. 585; Laws 1975, LB 489, § 3; Laws 1981, LB 73, § 1; Laws 1993, LB 235, § 22; R.S.1943, (1993), § 37-502; Laws 1998, LB 922, § 263; Laws 1999, LB 176, § 75; Laws 2001, LB 130, § 3; Laws 2013, LB499, § 13.

37-546 Offenses relating to baitfish; violation; penalty.

(1) It shall be unlawful (a) to take baitfish except for use as bait or (b) for any person except an aquaculturist or bait dealer to buy, sell, barter, offer to buy, sell, or barter, or have in his or her possession baitfish for any purpose whatsoever except for use as bait. No baitfish shall be taken from reservoirs, lakes, or bayous except as provided in rules and regulations of the commission.

(2) The commission may adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 pertaining to the taking, transportation, possession, buying, selling, and bartering of baitfish.

(3) Any person violating this section or the rules and regulations adopted and promulgated or commission orders passed under this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 3, p. 426; C.S.1929, § 37-503; Laws 1943, c. 94, § 12, p. 330; R.S.1943, § 37-503; Laws 1957, c. 148, § 1, p. 486; Laws 1961, c. 174, § 1, p. 516; Laws 1967, c. 216, § 10, p. 586; Laws 1973, LB 331, § 6; Laws 1981, LB 73, § 2; Laws 1993, LB 235, § 23; Laws 1994, LB 1165, § 9; Laws 1997, LB 752, § 89; R.S.Supp.,1997, § 37-503; Laws 1998, LB 922, § 266; Laws 1999, LB 176, § 77; Laws 2013, LB499, § 14.

37-547 Aquatic invasive species; wildlife; legislative intent.

It is the intent of the Legislature to prevent the release or importation into the State of Nebraska of any aquatic invasive species or any live wildlife which may cause economic or ecologic harm or be injurious to human beings, agriculture, horticulture, forestry, water, or wildlife or wildlife resources of the state. It is further the intent of the Legislature to prevent the commercial exploitation or exportation of any aquatic invasive species or any dead or live wildlife taken from the wild.

Source: Laws 1993, LB 830, § 10; R.S.1943, (1993), § 37-535; Laws 1998, LB 922, § 267; Laws 1999, LB 176, § 78; Laws 2012, LB391, § 9.

37-548 Aquatic invasive species; wildlife; prohibited acts; violation; penalty; release, importation, commercial exploitation, and exportation permits; fees; commission; powers and duties.

(1) It shall be unlawful for any person to import into the state or release to the wild any aquatic invasive species or any live wildlife including the viable gametes, eggs or sperm, except those which are approved by rules and regulations of the commission or as otherwise provided in the Game Law. It shall be unlawful to commercially exploit or export from the state any aquatic invasive species or dead or live wildlife taken from the wild except those which are exempted by rules and regulations of the commission. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) The commission shall adopt and promulgate rules and regulations to carry out subsection (1) of this section. In adopting such rules and regulations, the commission shall be governed by the Administrative Procedure Act. Such rules and regulations shall include a listing of (a) the aquatic invasive species or wildlife which may be released or imported into the state and (b) the aquatic invasive species or wildlife taken from the wild which may be commercially exploited or exported from the state. The rules and regulations for release, importation, commercial exploitation, and exportation of species other than commercial fish and bait fish shall include, but not be limited to, requirements for annual permits for release or importation or for commercial exploitation or exportation, permit fees, the number of individual animals of a particular species that may be released, imported, collected, or exported under a permit, and the manner and location of release or collection of a particular species. The rules and regulations may be amended, modified, or repealed from time to time, based upon investigation and the best available scientific, commercial, or other reliable data.

(3) The commission shall establish permit fees as required by subsection (2) of this section to cover the cost of permit processing and enforcement of the permits and research into and management of the ecological effects of release, importation, commercial exploitation, and exportation. The commission shall remit the fees to the State Treasurer for credit to the Wildlife Conservation Fund.

(4) The commission may determine that the release, importation, commercial exploitation, or exportation of aquatic invasive species or wildlife causes economic or ecologic harm by utilizing the best available scientific, commercial, and other reliable data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(5) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence as to whether such additional species will or will not cause ecologic or economic harm, conduct a review of any listed or unlisted species proposed to be removed from or added to the list published pursuant to subdivision (2)(a) of this section. The review shall be conducted pursuant to subsection (4) of this section.

(6) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence that commercial exploitation or exportation will cause ecologic or economic harm or significant impact to an aquatic or wildlife population, conduct a review of

any listed or unlisted species proposed to be added to or removed from the list published pursuant to subdivision (2)(b) of this section. The review shall be conducted pursuant to subsection (4) of this section.

Source: Laws 1993, LB 830, § 11; R.S.1943, (1993), § 37-536; Laws 1998, LB 922, § 268; Laws 1999, LB 176, § 79; Laws 2007, LB299, § 15; Laws 2012, LB391, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

(e) DAMAGE BY WILDLIFE

37-559 Destruction of predators; permit required; when; mountain lion; actions authorized.

(1) Any farmer or rancher owning or operating a farm or ranch may destroy or have destroyed any predator preying on livestock or poultry or causing other agricultural depredation on land owned or controlled by him or her without a permit issued by the commission. For purposes of this subsection, predator means a badger, bobcat, coyote, gray fox, long-tailed weasel, mink, opossum, raccoon, red fox, or skunk.

(2) Any farmer or rancher owning or operating a farm or ranch, or his or her agent, may kill a mountain lion immediately without prior notice to or permission from the commission if he or she encounters a mountain lion and the mountain lion is in the process of stalking, killing, or consuming livestock on the farmer's or rancher's property. The farmer or rancher or his or her agent shall be responsible for immediately notifying the commission and arranging with the commission to transfer the mountain lion to the commission.

(3) Any person shall be entitled to defend himself or herself or another person without penalty if, in the presence of such person, a mountain lion stalks, attacks, or shows unprovoked aggression toward such person or another person.

(4) This section shall not be construed to allow a farmer or rancher or his or her agent to destroy or have destroyed species which are protected by the Nongame and Endangered Species Conservation Act or rules and regulations adopted and promulgated under the act, the federal Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., the federal Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 et seq., the federal Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 et seq., the federal Migratory Bird Treaty Act, as amended, 16 U.S.C. 703 et seq., or federal regulations under such federal acts.

Source: Laws 1998, LB 922, § 279; Laws 2010, LB836, § 4.

Cross References

Nongame and Endangered Species Conservation Act, see section 37-801.

37-562 Repealed. Laws 2011, LB 41, § 31.

**ARTICLE 6
ENFORCEMENT**

Section
37-604. Enforcement of Game Law; duties; fees and mileage.

Section

- 37-613. Wildlife; prohibited acts; liquidated damages; schedule; disposition.
37-614. Revocation and suspension of permits; grounds.
37-615. Revoked or suspended permit; unlawful acts; violation; penalty.
37-618. Suspension or revocation in other jurisdiction; effect; violation; penalty.

37-604 Enforcement of Game Law; duties; fees and mileage.

It shall be the duty of all conservation officers, sheriffs, deputy sheriffs, and other peace officers to make prompt investigation of and arrests for any violations of the Game Law observed or reported by any person and to cause a complaint to be filed before a court having jurisdiction thereof in case there seems just ground for such complaint and evidence procurable to support the same. Upon the filing of such a complaint, it shall be the duty of such officer to render assistance in the prosecution of the party complained against. Sheriffs, deputy sheriffs, and other peace officers making arrests and serving warrants under this section shall receive fees and mileage under the provisions of the statutes of the state with mileage to be computed at the rate provided for county sheriffs in section 33-117. Conservation officers shall serve writs and processes, civil and criminal, when such writs and processes pertain to enforcement of duties imposed by law on the commission. Any officer or person purporting to enforce the laws of this state or rules and regulations adopted and promulgated or commission orders passed pursuant thereto shall on the demand of any person apprehended by him or her exhibit to such person his or her written commission of authority as such enforcement officer.

Source: Laws 1998, LB 922, § 294; Laws 1999, LB 176, § 86; Laws 2013, LB499, § 15.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

- (a) Fifteen thousand dollars for each mountain sheep;
- (b) Five thousand dollars for each elk with a minimum of twelve total points and one thousand five hundred dollars for any other elk;
- (c) Five thousand dollars for each whitetail deer with a minimum of eight total points and an inside spread between beams of at least eighteen inches, one thousand dollars for any other antlered whitetail deer, and two hundred fifty dollars for each antlerless whitetail deer and whitetail doe deer;
- (d) Five thousand dollars for each mule deer with a minimum of eight total points and an inside spread between beams of at least twenty-four inches and one thousand dollars for any other mule deer;
- (e) Five thousand dollars for each antelope with the shortest horn measuring a minimum of fourteen inches in length and one thousand dollars for any other antelope;
- (f) One thousand five hundred dollars for each bear or moose or each individual animal of any threatened or endangered species of wildlife not otherwise listed in this subsection;
- (g) Five hundred dollars for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof;

- (h) Twenty-five dollars for each raccoon, opossum, skunk, or raw pelt thereof;
- (i) Five thousand dollars for each eagle;
- (j) One hundred dollars for each wild turkey;
- (k) Twenty-five dollars for each dove;
- (l) Seventy-five dollars for each other game bird, other game animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife in need of conservation as designated by the commission pursuant to section 37-805, not otherwise listed in this subsection;
- (m) Fifty dollars for each wild bird not otherwise listed in this subsection;
- (n) Seven hundred fifty dollars for each swan or paddlefish;
- (o) Two hundred dollars for each master angler fish measuring more than twelve inches in length;
- (p) Fifty dollars for each game fish measuring more than twelve inches in length not otherwise listed in this subsection;
- (q) Twenty-five dollars for each other game fish; and
- (r) Fifty dollars for any other species of game not otherwise listed in this subsection.

(2) The commission shall adopt and promulgate rules and regulations to provide for a list of master angler fish which are subject to this section and to prescribe guidelines for measurements and point determinations as required by this section. The commission may adopt a scoring system which is uniformly recognized for this purpose.

(3) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5; Laws 2009, LB105, § 34.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law, the rules and regulations of the commission, or commission orders not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2; Laws 2013, LB499, § 16.

37-615 Revoked or suspended permit; unlawful acts; violation; penalty.

It shall be unlawful for any person to take any species of wildlife protected by the Game Law while his or her permits are revoked. It shall be unlawful for any person to apply for or purchase a permit to hunt, fish, or harvest fur in Nebraska while his or her permits are revoked and while the privilege to purchase such permits is suspended. Any person who violates this section shall be guilty of a Class III misdemeanor and in addition shall be suspended from hunting, fishing, and fur harvesting or purchasing permits to hunt, fish, and harvest fur for a period of not less than two nor more than five years as the court directs. The court shall consider the number and severity of the violations of the Game Law in determining the length of the suspension.

Source: Laws 1998, LB 922, § 305; Laws 2011, LB41, § 28.

37-618 Suspension or revocation in other jurisdiction; effect; violation; penalty.

(1) Except as otherwise provided in subsection (3) of this section, any person whose privilege or permit to hunt, fish, or harvest fur has been suspended or revoked in any jurisdiction within the United States or Canada shall be prohibited from obtaining a permit for such activity in this state during the period of suspension or revocation in the prosecuting jurisdiction if the offense for which the privilege or permit is suspended or revoked is an offense under the Game Law or would constitute grounds for suspension or revocation under sections 37-614 to 37-617.

(2) If such person has previously obtained a permit under the Game Law for such activity, the permit shall become invalid and shall be suspended for the same period as determined in the prosecuting jurisdiction. The person shall immediately return the permit to the commission. No person shall possess a permit which has been suspended or revoked under this section except as otherwise provided in subsection (3) of this section.

(3) The commission may adopt and promulgate rules and regulations to create a process to (a) review the suspension or revocation of a privilege or permit to hunt, fish, or harvest fur imposed by any jurisdiction other than Nebraska to determine if the offense for which the privilege or permit is suspended or revoked is an offense under the Game Law or would constitute grounds for suspension or revocation under sections 37-614 to 37-617 and (b) provide for a hearing, if necessary, to confirm the suspension or revocation in Nebraska or reinstate the privilege or affirm the eligibility of the person to purchase a permit in Nebraska. The process may include an application for the review and a procedure for screening applications to determine if the hearing before the commission is necessary or appropriate.

(4) Any person who violates the provisions of this section shall be guilty of a Class I misdemeanor.

Source: Laws 1998, LB 922, § 308; Laws 2011, LB41, § 29.

ARTICLE 7**RECREATIONAL LANDS****(c) PRIVATELY OWNED LANDS**

Section

37-727. Hunting; privately owned land; violations; penalty.

(c) PRIVATELY OWNED LANDS**37-727 Hunting; privately owned land; violations; penalty.**

Any person violating section 37-722 or sections 37-724 to 37-726 shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1963, c. 199, § 5, p. 647; Laws 1977, LB 40, § 178; R.S.1943, (1993), § 37-213.06; Laws 1998, LB 922, § 341; Laws 2009, LB105, § 35.

ARTICLE 9
FEDERAL ACTS

Section

- 37-914. National Trails System Act; commission; railroad right-of-way; acquisition; uses; conditions.
- 37-915. Nebraska Youth Conservation Program; legislative findings and intent.
- 37-916. Nebraska Youth Conservation Program; terms, defined.
- 37-917. Nebraska Youth Conservation Program; created; purpose; participants; qualification; payment; status; coordination with federal, state, and local programs.
- 37-918. Nebraska Youth Conservation Program; rules and regulations.
- 37-919. Nebraska Youth Conservation Program; report; contents.
- 37-920. Nebraska Youth Conservation Program Fund; created; use; investment.
- 37-921. Transfer by State Treasurer.

37-914 National Trails System Act; commission; railroad right-of-way; acquisition; uses; conditions.

(1) Pursuant to the National Trails System Act, and with the consent of the Governor pursuant to section 37-303, the Game and Parks Commission may acquire by gift, devise, or purchase all or any part of a railroad right-of-way in the state proposed to be abandoned for interim trail use. The commission, pursuant to the National Trails System Act, shall hold the right-of-way for one or more of the following uses:

- (a) To provide a state recreational trail open to the public;
- (b) To preserve wildlife habitat;
- (c) To provide a conservation, communications, utilities, and transportation corridor; and
- (d) Other uses approved by the commission.

(2) The right-of-way may be acquired only if the State of Nebraska is reasonably protected in a manner satisfactory to the commission for the costs of remedial action and environmental cleanup for conditions arising prior to conveyance to the state and the title is free and clear of all liens and encumbrances.

(3) The commission may use funds available by gift, appropriation, the Trail Development Assistance Fund, and other appropriate cash funds for uses consistent with those stated in this section and sections 37-303 and 37-1003.

(4) As long as the integrity of the right-of-way as an interim recreational trail and future rail use is not disturbed, the commission may lease and grant easement rights on the right-of-way. Any lease or use allowed shall be subject to all prescriptions of the National Trails System Act. All revenue collected from such leases shall be remitted to the State Treasurer for credit to the Trail Development Assistance Fund pursuant to sections 37-1003 and 37-1004.

(5) The commission shall continue to allow all crossings across the right-of-way acquired at the time of acquisition on substantially the same terms and conditions as they existed prior to acquisition unless otherwise agreed between the commission and interested parties.

(6) The acquisition of the right-of-way shall be subject to the restoration of rail service. If a proposal for the operation of a railroad is approved by the federal Surface Transportation Board, the right-of-way shall be sold for the market value of the land and improvements and conditioned upon (a) the

operation of a railroad along the right-of-way, (b) the grant of an easement to the commission for recreational trail use adjacent to the railroad if such use is feasible, and (c) the return of the right-of-way to the commission if rail service is discontinued.

Source: Laws 1996, LB 584, § 18; R.S.1943, (1996), § 81-815.65; Laws 1998, LB 922, § 375; Laws 2011, LB259, § 1.

37-915 Nebraska Youth Conservation Program; legislative findings and intent.

(1) The Legislature finds that:

(a) Every Nebraska youth should be encouraged to reach his or her full potential, but that many youth require guidance and support to reach their goals and make positive changes in their lives;

(b) Conserving and developing natural resources and enhancing and maintaining environmentally important land and water through the employment of Nebraska's at-risk youth is beneficial not only to the youth by providing them with education and employment opportunities but also to the state's economy and environment; and

(c) The Nebraska Youth Conservation Program will offer Nebraska a unique opportunity to meet the goals of increasing understanding and appreciation of the environment and helping at-risk youth become productive adults.

(2) It is the intent of the Legislature:

(a) That Nebraska Youth Conservation Program participants complete their participation in the program having learned good work habits, positive attitudes, and broadened professional horizons;

(b) That the program combine academic, environmental, and job skills training with personal growth opportunities in order to develop productive youth who can make substantial contributions as Nebraska workers and citizens; and

(c) To ensure that the Game and Parks Commission coordinate and collaborate with partners from other state and federal government agencies, political subdivisions, postsecondary educational institutions, and community organizations and enter into agreements with such partners for the benefit of the program, as appropriate.

Source: Laws 2011, LB549, § 1.

37-916 Nebraska Youth Conservation Program; terms, defined.

For purposes of sections 37-915 to 37-921:

(1) At-risk youth means a youth who has a barrier to successful employment, demonstrates low income by living in a household with income that falls below the federal poverty guidelines or by receiving public assistance, has been impacted directly by substance abuse or physical abuse, has had negative contact with law enforcement, or is not experiencing success in school and is in jeopardy of dropping out; and

(2) Commission means the Game and Parks Commission.

Source: Laws 2011, LB549, § 2.

37-917 Nebraska Youth Conservation Program; created; purpose; participants; qualification; payment; status; coordination with federal, state, and local programs.

(1) The Nebraska Youth Conservation Program is created. The purpose of the program is to employ Nebraska's at-risk youth on projects which contribute to conserving or developing natural resources and enhancing and maintaining environmentally important land and water under the jurisdiction of the commission. The program shall combine academic, environmental, and job skills training with personal growth opportunities for the participants. The commission may administer and maintain the program, directly or by means of contractual arrangement with an experienced service provider or the Department of Labor.

(2) Participants shall be at-risk youth who are at least sixteen years of age and not older than twenty-one years of age, unemployed, and residents of Nebraska. Special effort shall be made to select applicants residing in rural and urban high-poverty areas, as determined by the most recent federal census data.

(3) Participants shall be paid not less than the minimum wage described in section 48-1203. Participation in the program shall be for a period of six weeks for each participant. Participants and program supervisory personnel may be provided meals during the six-week work period. Protective clothing items shall be provided to participants and supervisory personnel as work conditions warrant.

(4) Participants in the Nebraska Youth Conservation Program may be considered temporary employees. This subsection does not apply to crew chiefs and other administrative and supervisory personnel of the program, all of whom may be employees of the commission or employees of an entity hired by or under contract with the commission or the Department of Labor to administer the program. The program shall not result in displacement of current employees or cause a reduction in current employees' hours or wages and shall be in compliance with applicable federal and state labor and education laws.

(5) The commission may coordinate with federal, state, and local programs that provide job training and placement services and education opportunities for participants after completing the program.

Source: Laws 2011, LB549, § 3.

37-918 Nebraska Youth Conservation Program; rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the Nebraska Youth Conservation Program, which rules and regulations may include, but need not be limited to, the application process, the selection process, projects to which participants in the program shall be assigned, and any other matters the commission deems necessary.

Source: Laws 2011, LB549, § 4.

37-919 Nebraska Youth Conservation Program; report; contents.

On or before December 1, 2012, the commission shall report to the Legislature on the Nebraska Youth Conservation Program. The report shall be submitted electronically and shall include, at a minimum, the number and ages of the participants, the areas in which they reside, the rate of compensation of

participants, the number and type of projects in which participants engaged, the significance of those projects to the environment and the economy of the state, and any other matters the commission deems significant for inclusion in the report.

Source: Laws 2011, LB549, § 5; Laws 2012, LB782, § 37.

37-920 Nebraska Youth Conservation Program Fund; created; use; investment.

The Nebraska Youth Conservation Program Fund is created. The fund shall consist of appropriations by the Legislature and any gifts, grants, bequests, and other contributions to the fund for purposes of the Nebraska Youth Conservation Program. The fund shall be used by the commission to carry out the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2011, LB549, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

37-921 Transfer by State Treasurer.

Within five days after May 18, 2011, the State Treasurer shall transfer \$994,400 from the State Settlement Cash Fund to the Nebraska Youth Conservation Program Fund.

Source: Laws 2011, LB549, § 7.

ARTICLE 10

RECREATIONAL TRAILS

Section

37-1016. Cowboy Trail; Game and Parks Commission; lease or transfer of portions authorized.

37-1016 Cowboy Trail; Game and Parks Commission; lease or transfer of portions authorized.

The Game and Parks Commission may lease or otherwise transfer portions of the Cowboy Trail to a political subdivision. The commission may lease portions of the Cowboy Trail to a nonprofit organization. The lessee or transferee shall maintain the property at its own expense. Any such lease or transfer shall be subject to the requirements of the federal National Trails System Act, 16 U.S.C. 1241, as such act and section existed on January 1, 2013.

Source: Laws 2013, LB493, § 1.

ARTICLE 12

STATE BOAT ACT

Section

37-1201. Act, how cited; declaration of policy.

37-1211. Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.

37-1214. Motorboat; registration; period valid; application; fee.

STATE BOAT ACT

- Section
- 37-1215. Motorboat; registration period already commenced; fee reduced; computation.
- 37-1216. Motorboat; application for registration; issuance of a certificate of number; how displayed.
- 37-1217. Motorboat; registration; fee to recover administrative costs.
- 37-1218. Motorboat; registration transmitted to Game and Parks Commission; when; duplicate copy.
- 37-1219. Registration fees; remitted to commission; when; form; duplicate copy.
- 37-1223. Motorboat; change of ownership; new application; original number retained; when.
- 37-1226. Motorboat; certificate of number and number awarded; period valid; renewal; fee.
- 37-1227. Certificate of number; lost or destroyed; replacement; fee.
- 37-1238.01. Vessel equipped with red or blue light; limitation on operation.
- 37-1241.06. Motorboat or personal watercraft; age restrictions; boating safety course; fee.
- 37-1241.07. Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation; duties of owner, agent, or employee.
- 37-1241.08. Sections; applicability.
- 37-1254.01. Boating under influence of alcoholic liquor or drug; city or village ordinances; violation; penalty.
- 37-1254.02. Boating under influence of alcoholic liquor or drug; implied consent to submit to chemical test; preliminary test; refusal; advisement; effect; violation; penalty.
- 37-1254.03. Boating under influence of alcoholic liquor or drug; choice of test; privileges of person tested.
- 37-1254.05. Boating under influence of alcoholic liquor or drug; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee; evidence existing or obtained outside state; effect.
- 37-1254.07. Boating under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.
- 37-1254.08. Boating under influence of alcoholic liquor or drug; test without preliminary breath test; when; qualified personnel.
- 37-1254.09. Boating under influence of alcoholic liquor or drug; peace officer; preliminary breath test; refusal; violation; penalty.
- 37-1254.10. Boating during court-ordered prohibition; violation; penalty.
- 37-1254.11. Boating under influence of alcoholic liquor or drug; violation; sentencing; terms, defined; prior convictions; use; prosecutor; present evidence; convicted person; rights.
- 37-1254.12. Boating under influence of alcoholic liquor or drug; penalties; probation or sentence suspension; court orders.
- 37-1277. Acquisition of motorboat; requirements.
- 37-1278. Certificate of title; application; issuance; transfer of motorboat.
- 37-1279. Certificate of title; issuance; form; county treasurer; duties; filing.
- 37-1280. Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title.
- 37-1280.01. Repealed. Laws 2012, LB 801, § 102.
- 37-1282. Department of Motor Vehicles; implement electronic title and lien system for motorboats; security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.
- 37-1282.01. Printed certificate of title; when issued.
- 37-1283. New certificate; when issued; proof required; processing of application.
- 37-1284. Certificate; loss or destruction; replacement; subsequent purchaser, rights; recovery of original; duty of owner.
- 37-1285. Certificate; surrender and cancellation; when required.
- 37-1286. Forms; contents; assignment of hull identification number; fee.
- 37-1287. Fees; disposition.
- 37-1289. Violations; penalty.
- 37-1290. Security interest perfected prior to January 1, 1997; treatment; notation of lien.
- 37-1291. Nontransferable certificate of title; issued; when; effect.

Section

- 37-1293. Salvage branded certificate of title; when issued; procedure.
37-1295. Certificate of title; disclosures required.
37-1296. Acquisition of salvage motorboat without salvage branded certificate of title; duties.

37-1201 Act, how cited; declaration of policy.

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

Source: Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1; Laws 2011, LB667, § 8.

37-1211 Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.

(1) Except as provided in subsections (2) and (3) of this section and sections 37-1249 and 37-1250, every motorboat on the waters of this state shall be numbered and no person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with the State Boat Act or in accordance with the laws of another state if the commission has by regulation approved the numbering system of such state and unless the certificate of number awarded to such vessel is in full force and effect and the identifying number set forth in the certificate of number is displayed and legible on each side of the forward half of the vessel.

(2) The owner of each motorboat may operate or give permission for the operation of such vessel for thirty days from the date the vessel was acquired in anticipation of the vessel being numbered. A duly executed bill of sale, certificate of title, or other satisfactory evidence of the right of possession of the vessel as prescribed by the Department of Motor Vehicles must be available for inspection at all times from the operator of the vessel.

(3) The owner or his or her invitee who operates a personal watercraft on any body of water (a) which is entirely upon privately owned land owned by only one person or one family and, if leased, leased by only one person or one family, (b) which does not connect by any permanent or intermittent inflow or outflow with other water outside such land, and (c) which is not operated on a commercial basis for profit may operate any personal watercraft on such body of water without complying with subsection (1) of this section.

Source: Laws 1978, LB 21, § 11; Laws 1995, LB 376, § 1; Laws 1998, LB 922, § 394; Laws 2009, LB202, § 2.

37-1214 Motorboat; registration; period valid; application; fee.

Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a fee for the three-year period of not less than twenty dollars and not more than twenty-three dollars for Class 1

boats, not less than forty dollars and not more than forty-six dollars for Class 2 boats, not less than sixty dollars and not more than sixty-seven dollars and fifty cents for Class 3 boats, and not less than one hundred dollars and not more than one hundred fifteen dollars for Class 4 boats, as established by the commission pursuant to section 37-327.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21; Laws 2012, LB801, § 6.

37-1215 Motorboat; registration period already commenced; fee reduced; computation.

In the event an application is made after the beginning of any registration period for registration of any vessel not previously registered by the applicant in this state, the license fee on such vessel shall be reduced by one thirty-sixth for each full month of the registration period already expired as of the date such vessel was acquired. The county treasurer shall compute the registration fee on forms and pursuant to rules of the commission.

Source: Laws 1978, LB 21, § 15; Laws 1996, LB 464, § 3; Laws 2012, LB801, § 7.

37-1216 Motorboat; application for registration; issuance of a certificate of number; how displayed.

After the owner of the vessel submits an application as provided in section 37-1214 and presents a certificate of title if required pursuant to section 37-1276, the county treasurer shall enter the application upon the records of the office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner. The number shall be displayed on each side of the bow, and the numbers shall be at least three inches high, of block characteristics, contrasting in color with the boat, and clearly visible from a distance of one hundred feet. The commission shall assign each county treasurer a block of numbers and certificates therefor.

Source: Laws 1978, LB 21, § 16; Laws 1994, LB 123, § 2; Laws 1996, LB 464, § 4; Laws 1997, LB 720, § 2; Laws 2012, LB801, § 8.

37-1217 Motorboat; registration; fee to recover administrative costs.

When the county treasurer or the commission registers a vessel, such county treasurer or the commission shall be entitled to collect and retain a fee, in addition to the registration fee, of not less than three dollars and not more than four dollars on each registration issued, as established by the commission pursuant to section 37-327, as reimbursement for administrative costs incurred in issuing such certificate of registration. Such fee shall be credited to the general fund of the county and shall be included by the county treasurer in his or her report of fees as provided by law.

Source: Laws 1978, LB 21, § 17; Laws 1993, LB 235, § 37; Laws 1996, LB 464, § 5; Laws 1998, LB 922, § 397; Laws 2003, LB 306, § 22; Laws 2012, LB801, § 9.

37-1218 Motorboat; registration transmitted to Game and Parks Commission; when; duplicate copy.

Each county treasurer providing registration to an owner of a vessel shall transmit on or before the thirtieth day of the following month registration information to the commission. The county treasurer shall retain a duplicate copy of the registration.

Source: Laws 1978, LB 21, § 18; Laws 1996, LB 464, § 6; Laws 2001, LB 131, § 2; Laws 2012, LB801, § 10.

37-1219 Registration fees; remitted to commission; when; form; duplicate copy.

All registration fees received by the county treasurers shall be remitted on or before the thirtieth day of the following month to the secretary of the commission. All remittances shall be upon a form to be furnished by the commission and a duplicate copy shall be retained by the county treasurer.

Source: Laws 1978, LB 21, § 19; Laws 1996, LB 464, § 7; Laws 2012, LB801, § 11.

37-1223 Motorboat; change of ownership; new application; original number retained; when.

If the ownership of a vessel changes, a new application form with fee shall be filed with the county treasurer and a new certificate of number stating the number awarded shall be issued in the same manner as provided for in an original award of number. The county treasurer may allow the new owner to retain the previously assigned boat number if the existing number is serviceable. The commission shall provide procedures for the county treasurers to follow in determining whether the existing number is serviceable.

Source: Laws 1978, LB 21, § 23; Laws 1996, LB 464, § 8; Laws 2012, LB801, § 12.

37-1226 Motorboat; certificate of number and number awarded; period valid; renewal; fee.

(1) Every certificate of number and number awarded pursuant to the State Boat Act shall continue in full force and effect for a period of three years unless sooner terminated or discontinued. The numbering periods shall commence January 1 of each year and expire on December 31 of every three-year numbering period thereafter.

(2) Certificates of number and the number awarded may be renewed by the owner by presenting the previously issued certificate of number to the county treasurer or an agent authorized to issue renewals. An owner whose registration has expired shall have until March 1 following the year of expiration to renew such registration.

(3) The fee for renewal shall be the same as for original registration as provided in section 37-1214.

Source: Laws 1978, LB 21, § 26; Laws 1994, LB 123, § 19; Laws 1996, LB 464, § 9; Laws 1999, LB 176, § 114; Laws 2012, LB801, § 13.

37-1227 Certificate of number; lost or destroyed; replacement; fee.

In the event of loss or destruction of the certificate of number, the owner of the vessel shall apply to the county treasurer on forms provided by the commission for replacement of such lost certificate of number. Upon satisfactory proof of loss and the payment to the county treasurer of a fee of not less than one dollar and not more than five dollars, as established by the commission, the county treasurer shall issue a duplicate certificate of number.

Source: Laws 1978, LB 21, § 27; Laws 1993, LB 235, § 38; Laws 1996, LB 464, § 10; Laws 1998, LB 922, § 399; Laws 2001, LB 131, § 3; Laws 2012, LB801, § 14.

37-1238.01 Vessel equipped with red or blue light; limitation on operation.

No person other than a rescue squad member actually en route to, at, or returning from any emergency requiring the services of such member or any peace officer in the performance of his or her official duties shall operate a vessel equipped with a rotating or flashing red or blue light or lights upon the waters of this state.

Source: Laws 1993, LB 235, § 42; Laws 2011, LB667, § 9.

37-1241.06 Motorboat or personal watercraft; age restrictions; boating safety course; fee.

(1)(a) No person under fourteen years of age shall operate a motorboat or personal watercraft on the waters of this state.

(b) No person under sixteen years of age shall operate a motorboat or personal watercraft on the waters of this state with an individual in tow behind the motorboat or personal watercraft.

(2) Effective January 1, 2012, no person born after December 31, 1985, shall operate a motorboat or personal watercraft on the waters of this state unless he or she has successfully completed a boating safety course approved by the commission and has been issued a valid boating safety certificate.

(3) The commission may charge a fee of no more than ten dollars for a boating safety course required by this section.

Source: Laws 1999, LB 176, § 107; Laws 2003, LB 305, § 22; Laws 2011, LB105, § 1.

37-1241.07 Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation; duties of owner, agent, or employee.

(1) The owner of a boat livery, or his or her agent or employee, shall not lease, hire, or rent a motorboat or personal watercraft to any person under eighteen years of age.

(2) Except as provided in subdivision (1)(a) of section 37-1241.06, a person younger than eighteen years of age may operate a motorboat or personal watercraft rented, leased, or hired by a person eighteen years of age or older if the person younger than eighteen years of age holds a valid boating safety certificate issued under section 37-1241.06.

(3) The owner of a boat livery, or his or her agent or employee, engaged in the business of renting or leasing motorboats shall list on each rental or lease agreement for a motorboat the name and age of each person who is authorized to operate the motorboat. The person to whom the motorboat is rented or

leased shall ensure that only those persons who are listed as authorized operators are allowed to operate the motorboat.

(4) The owner of a boat livery, or his or her agent or employee, engaged in the business of renting or leasing motorboats shall display for review by each person who is authorized to operate the motorboat a summary of the statutes and the rules and regulations governing the operation of a motorboat and instructions regarding the safe operation of the motorboat. Each person who is listed as an authorized operator of the motorboat shall review the summary of the statutes, rules, regulations, and instructions and sign a statement indicating that he or she has done so prior to leaving the rental or leasing office.

Source: Laws 1999, LB 176, § 108; Laws 2003, LB 305, § 23; Laws 2005, LB 21, § 1; Laws 2009, LB105, § 36.

37-1241.08 Sections; applicability.

Sections 37-1241.01 to 37-1241.07 shall not apply to a person operating a motorboat or personal watercraft and participating in a regatta, race, marine parade, tournament, or exhibition which has been authorized or permitted by the commission pursuant to sections 37-1262 and 37-1263 or to a person who is otherwise exempt from the State Boat Act.

Source: Laws 1999, LB 176, § 109; Laws 2009, LB105, § 37; Laws 2011, LB105, § 2.

37-1254.01 Boating under influence of alcoholic liquor or drug; city or village ordinances; violation; penalty.

(1) No person shall be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any city or village may enact ordinances in conformance with this section and section 37-1254.02. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of sections 37-1254.11 and 37-1254.12 shall be applicable the same as though it were a violation of this section or section 37-1254.02.

(3) Any person who is in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in section 37-1254.12.

Source: Laws 1989, LB 195, § 3; Laws 2001, LB 166, § 1; Laws 2001, LB 773, § 7; Laws 2011, LB667, § 10.

37-1254.02 Boating under influence of alcoholic liquor or drug; implied consent to submit to chemical test; preliminary test; refusal; advisement; effect; violation; penalty.

(1) Any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state shall be

deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state under the influence of alcohol or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that the person was in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or drugs in violation of section 37-1254.01. It shall be unlawful for a person to refuse to provide a sample of his or her blood, breath, or urine after being directed by a peace officer to submit to a chemical test or tests of his or her blood or breath pursuant to this section.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs.

(4) Any person involved in a motorboat or personal watercraft accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcoholic liquor or drugs at the time of the accident.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that if he or she refuses to submit to such test or tests, he or she could be charged with a separate crime. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Any person convicted of a violation of this section shall be punished as provided in section 37-1254.12.

(7) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 37-1254.01 or a city or village ordinance enacted in conformance with such section.

Source: Laws 1989, LB 195, § 4; Laws 1999, LB 176, § 121; Laws 2001, LB 166, § 2; Laws 2001, LB 773, § 8; Laws 2011, LB667, § 11.

37-1254.03 Boating under influence of alcoholic liquor or drug; choice of test; privileges of person tested.

The peace officer who requires a chemical blood, breath, or urine test or tests pursuant to section 37-1254.02 may direct whether the test or tests shall be of

blood, breath, or urine. When the officer directs that the test or tests shall be of a person's blood, the person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests such person tested deems appropriate in addition to and following the test or tests administered at the direction of the peace officer. If the officer refuses to permit such additional test or tests to be taken, then the original test or tests shall not be competent as evidence. Upon request the results of the test or tests taken at the direction of the peace officer shall be made available to the person being tested.

Source: Laws 1989, LB 195, § 5; Laws 2001, LB 773, § 9; Laws 2011, LB667, § 12.

37-1254.05 Boating under influence of alcoholic liquor or drug; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee; evidence existing or obtained outside state; effect.

(1) Except as provided in section 37-1254.03, any test or tests made pursuant to section 37-1254.02, if made in conformance with the requirements of this section, shall be competent evidence in any prosecution under a state law or city or village ordinance regarding the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or drugs or regarding the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state when the concentration of alcohol in the blood or breath is in excess of allowable levels in violation of section 37-1254.01 or a city or village ordinance.

(2) To be considered valid, tests shall have been performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by the department for such purpose. The department may approve satisfactory techniques or methods and ascertain the qualifications and competence of individuals to perform such tests and may issue permits which shall be subject to termination or revocation at the discretion of the department.

(3) The permit fee may be established by rules and regulations adopted and promulgated by the department, which fee shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund as a laboratory service fee.

(4) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving being in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcoholic liquor or drugs or involving being in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Source: Laws 1989, LB 195, § 7; Laws 1996, LB 1044, § 95; Laws 2001, LB 773, § 10; Laws 2007, LB296, § 53; Laws 2011, LB667, § 13.

37-1254.07 Boating under influence of alcoholic liquor or drug; violation of city or village ordinance; fee for test; court costs.

Upon the conviction of any person for violation of section 37-1254.01 or for being in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or of any drug in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests, pursuant to a permit issued in accordance with section 37-1254.05, for the test administered and the analysis thereof pursuant to section 37-1254.02 if such test was actually made.

Source: Laws 1989, LB 195, § 9; Laws 2011, LB667, § 14.

37-1254.08 Boating under influence of alcoholic liquor or drug; test without preliminary breath test; when; qualified personnel.

Any person arrested for any offense involving the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state while under the influence of alcohol or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 37-1254.02 without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or qualified technician acting at the request of a peace officer may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but such limitation shall not apply to the taking of a breath or urine specimen.

Source: Laws 1989, LB 195, § 10; Laws 2001, LB 773, § 11; Laws 2011, LB667, § 15.

37-1254.09 Boating under influence of alcoholic liquor or drug; peace officer; preliminary breath test; refusal; violation; penalty.

Any peace officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person is under the influence of alcohol or of any drug or has committed a violation of section 37-1254.01 or 37-1254.02. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 37-1254.01 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class III misdemeanor.

Source: Laws 2011, LB667, § 16.

37-1254.10 Boating during court-ordered prohibition; violation; penalty.

(1) It shall be unlawful for any person to be in the actual physical control of a motorboat or personal watercraft under propulsion upon the waters of this state during a period of court-ordered prohibition resulting from a conviction

based upon a violation of section 37-1254.01 or 37-1254.02 or a city or village ordinance enacted in conformance with either section.

(2) Any person who has been convicted of a violation of this section is guilty of a Class I misdemeanor.

Source: Laws 2011, LB667, § 17.

37-1254.11 Boating under influence of alcoholic liquor or drug; violation; sentencing; terms, defined; prior convictions; use; prosecutor; present evidence; convicted person; rights.

(1) For purposes of sentencing under section 37-1254.12:

(a) Prior conviction means a conviction for which a final judgment has been entered prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 37-1254.01:

(A) Any conviction for a violation of section 37-1254.01;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 37-1254.01; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 37-1254.01; or

(ii) For a violation of section 37-1254.02:

(A) Any conviction for a violation of section 37-1254.02;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 37-1254.02; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 37-1254.02; and

(b) Prior conviction includes any conviction under section 37-1254.01 or 37-1254.02, or any city or village ordinance enacted in conformance with either of such sections, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances.

(2) The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 37-1254.01 or 37-1254.02, the court shall, as part of the judgment of conviction, make a finding on the record whether the convicted person has a usable prior conviction. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 37-1254.01 or 37-1254.02 before January 1, 2012, but sentenced for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 37-1254.01 or 37-1254.02 in effect on the date of arrest.

Source: Laws 2011, LB667, § 18.

37-1254.12 Boating under influence of alcoholic liquor or drug; penalties; probation or sentence suspension; court orders.

Any person convicted of a violation of section 37-1254.01 or 37-1254.02 shall be punished as follows:

(1) If such person has not had a prior conviction, such person shall be guilty of a Class II misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction. Such order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order; and

(2) If such person has had one or more prior convictions, such person shall be guilty of a Class I misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the actual physical control of any motorboat or personal watercraft under propulsion upon the waters of this state for any purpose for a period of two years from the date of such conviction. Such order shall be administered upon sentencing or upon final judgment of any appeal or review. The two-year court-ordered prohibition shall apply even if probation is granted or the sentence suspended.

Source: Laws 2011, LB667, § 19.

37-1277 Acquisition of motorboat; requirements.

(1) Except as provided in subsections (2) and (3) of this section, no person acquiring a motorboat from the owner thereof, whether the owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to such motorboat until he or she has physical possession of the motorboat and a certificate of title or a manufacturer's or importer's certificate with assignments on the certificate to show title in the purchaser or an instrument in writing required by section 37-1281. No waiver or estoppel shall operate in favor of such person against a person having physical possession of the motorboat and the certificate of title, the manufacturer's or importer's certificate, or an instrument in writing required by section 37-1281. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motorboat sold, disposed of, mortgaged, or encumbered unless there is compliance with this section.

(2) A motorboat manufactured before November 1, 1972, is exempt from the requirement to have a certificate of title. If a person acquiring a motorboat which is exempt from the requirement to have a certificate of title desires to acquire a certificate of title for the motorboat, the person may apply for a certificate of title pursuant to section 37-1278.

(3) A motorboat owned by the United States, the State of Nebraska, or an agency or political subdivision of either is exempt from the requirement to have a certificate of title. A person other than an agency or political subdivision

acquiring such a motorboat which is not covered under subsection (2) of this section shall apply for a certificate of title pursuant to section 37-1278. The person shall show proof of purchase from a governmental agency or political subdivision to obtain a certificate of title.

(4) Beginning on the implementation date of the electronic title and lien system designated by the Director of Motor Vehicles pursuant to section 37-1282, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a motorboat.

Source: Laws 1994, LB 123, § 5; Laws 1996, LB 464, § 13; Laws 1997, LB 720, § 4; Laws 2009, LB202, § 3.

37-1278 Certificate of title; application; issuance; transfer of motorboat.

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214.

(2) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by husband and wife, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for

stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

Source: Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1279 Certificate of title; issuance; form; county treasurer; duties; filing.

(1) The county treasurer shall issue the certificate of title. The county treasurer shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat. If there are one or more liens on the motorboat, the certificate of title shall be handled as provided in section 37-1282. The county treasurer shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county treasurer or the Department of Motor Vehicles. Each county shall issue and file certificates of title using the vehicle titling and registration computer system.

(2) Each county treasurer of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

(3) The county treasurer shall (a) file all certificates of title according to rules and regulations of the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a motorboat, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16; Laws 2009, LB202, § 4; Laws 2012, LB801, § 16.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280 Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title.

The Department of Motor Vehicles shall adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290, and the county treasurers shall conform to the rules and regulations and act at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of such sections. The department shall receive and file in its office all instruments forwarded to it by

the county treasurers under such sections and shall maintain indices covering the entire state for the instruments so filed. These indices shall be by hull identification number and alphabetically by the owner's name and shall be for the entire state and not for individual counties. The department shall provide and furnish the forms required by section 37-1286 to the county treasurers except manufacturers' or importers' certificates. The department shall check with its records all duplicate certificates of title received from the county treasurers. If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate of title. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the certificate, and the county treasurer shall enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued and any lienholders appearing on the certificate of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate. The holder of the certificate of title shall return the certificate to the department immediately. If a certificate of number has been issued pursuant to section 37-1216 to the holder of a certificate of title so canceled, the department shall notify the commission. Upon receiving the notice, the commission shall immediately cancel the certificate of number and demand the return of the certificate of number and the holder of the certificate of number shall return the certificate to the commission immediately.

Source: Laws 1994, LB 123, § 8; Laws 1996, LB 464, § 17; Laws 2012, LB801, § 17.

37-1280.01 Repealed. Laws 2012, LB 801, § 102.

37-1282 Department of Motor Vehicles; implement electronic title and lien system for motorboats; security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.

(1) The Department of Motor Vehicles shall implement an electronic title and lien system for motorboats no later than January 1, 2011. The Director of Motor Vehicles shall designate the date for the implementation of the system. Beginning on the implementation date, the holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a motorboat may file a lien electronically as prescribed by the department. Beginning on the implementation date, upon receipt of an application for a certificate of title for a motorboat, any lien filed electronically shall become part of the electronic certificate of title record created by the county treasurer or department maintained on the electronic title and lien system. Beginning on the implementation date, if an application for a certificate of title indicates that there is a lien or encumbrance on a motorboat or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for motorboat dealers and lienholders who participate in the system by a method determined by the director.

(2) The provisions of article 9, Uniform Commercial Code, shall not be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any

copy of the same covering a motorboat. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a motorboat, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of the instrument or, in the case of a certificate of title, if a notation of same has been made electronically as prescribed in subsection (1) of this section or by the county treasurer or the department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants, but otherwise shall not be valid against them, except that during any period in which a motorboat is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is in the business of selling motorboats, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in the motorboat created by such person or corporation as debtor without the notation of lien on the instrument of title. A buyer at retail from a dealer of any motorboat in the ordinary course of business shall take the motorboat free of any security interest.

(3) All liens, security agreements, and encumbrances noted upon a certificate of title or an electronic certificate of title record and all liens noted electronically as prescribed in subsection (1) of this section shall take priority according to the order of time in which the same are noted on the certificate of title by the county treasurer or the department. Exposure for sale of any motorboat by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on the motorboat shall not render the same void or ineffective as against the creditors of the owner or holder of subsequent liens, security agreements, or encumbrances upon the motorboat.

(4) Upon presentation of a security agreement, trust receipt, conditional sales contract, or similar instrument to the county treasurer or department together with the certificate of title and the fee prescribed by section 37-1287, the holder of such instrument may have a notation of the lien made on the face of the certificate of title. The owner of a motorboat may present a valid out-of-state certificate of title issued to such owner for such motorboat with a notation of lien on such certificate of title and the prescribed fee to the county treasurer or department and have the notation of lien made on the new certificate of title issued pursuant to section 37-1278 without presenting a copy of the lien instrument. The county treasurer or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of office. If noted by a county treasurer, he or she shall on that day notify the department which shall note the lien on its records. The county treasurer or the department shall also indicate by appropriate notation and on such instrument itself the fact that the lien has been noted on the certificate of title.

(5) The county treasurer or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county treasurer or the department, within fifteen days from the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county treasurer or

the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer or the department for the purpose of showing such other lien on the certificate of title within fifteen days from the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(6) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 37-1287, and, if a printed certificate of title exists, the presentation of the certificate of title, the county treasurer or department shall make notation of such other lien. If the certificate of title is not an electronic certificate of title record, the county treasurer or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county treasurer or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county treasurer or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

(7) When the lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the face of the certificate of title over his, her, or its signature and deliver the certificate of title to the county treasurer or the department which shall note the cancellation of the lien on the face of the certificate of title and on the records of the office. If delivered to a county treasurer, he or she shall on that day notify the department which shall note the cancellation on its records. The county treasurer or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of the lien shall be noted on the certificate of title without charge. For an electronic certificate of title record, the lienholder shall, within fifteen days after payment is received when such lien is discharged, notify the department electronically or provide written notice of such lien release, in a manner prescribed by the department, to the county treasurer or department. The department shall note the cancellation of lien and, if no other liens exist, issue the certificate of title to the owner or as otherwise directed by the owner or lienholder. If the holder of the certificate of title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 1994, LB 123, § 10; Laws 1996, LB 464, § 18; Laws 1999, LB 550, § 7; Laws 2008, LB756, § 1; Laws 2009, LB202, § 5; Laws 2012, LB801, § 18.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1282.01 Printed certificate of title; when issued.

Beginning on the implementation date of the electronic title and lien system designated by the Director of Motor Vehicles pursuant to section 37-1282, a lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the motorboat relocates to another state or country or if requested for any other purpose approved by the Department of Motor Vehicles. Upon proof by the owner that a lienholder has not provided the requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

Source: Laws 2009, LB202, § 6.

37-1283 New certificate; when issued; proof required; processing of application.

(1) In the event of the transfer of ownership of a motorboat by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) whenever a motorboat is sold to satisfy storage or repair charges, or (3) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be. If from the records of the county treasurer or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19; Laws 2009, LB202, § 7; Laws 2012, LB751, § 2; Laws 2012, LB801, § 19.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1284 Certificate; loss or destruction; replacement; subsequent purchaser, rights; recovery of original; duty of owner.

In the event of a lost or destroyed certificate of title, the owner of the motorboat or the holder of a lien on the motorboat shall apply, upon a form prescribed by the Department of Motor Vehicles, to any county treasurer or to the department for a certified copy of the certificate of title and shall pay the fee prescribed by section 37-1287. The application shall be signed and sworn to by the person making the application. The county treasurer, with the approval of the department, or the department shall issue a certified copy of the certificate of title to the person entitled to receive the certificate of title. If the county treasurer's records of the title have been destroyed pursuant to section 37-1279, the county treasurer shall issue a duplicate certificate of title to the person entitled to receive the certificate upon such showing as the county treasurer deems sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county treasurer to issue a duplicate certificate of title. The new purchaser shall be entitled to receive an original title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county treasurer as prescribed in section 37-1278. Any purchaser of the motorboat may at the time of purchase require the seller of the motorboat to indemnify him or her and all subsequent purchasers of the motorboat against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall immediately surrender the certificate to the county treasurer or the department for cancellation.

Source: Laws 1994, LB 123, § 12; Laws 1996, LB 464, § 20; Laws 2012, LB751, § 3; Laws 2012, LB801, § 20.

37-1285 Certificate; surrender and cancellation; when required.

Each owner of a motorboat and each person mentioned as owner in the last certificate of title, when the motorboat is dismantled, destroyed, or changed in such a manner that it loses its character as a motorboat or changed in such a manner that it is not the motorboat described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the Department of Motor Vehicles. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted on the certificate, enter a cancellation upon the records and shall notify the department of the cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted on the certificate, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 1994, LB 123, § 13; Laws 1996, LB 464, § 21; Laws 2012, LB751, § 4; Laws 2012, LB801, § 21.

37-1286 Forms; contents; assignment of hull identification number; fee.

A certificate of title shall be printed upon safety security paper to be selected by the Department of Motor Vehicles. The certificate of title, manufacturer's

statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include county of issuance, date of issuance, certificate of title number, previous certificate of title number, name and address of the owner, acquisition date, manufacturer's name, model year, hull identification number, hull material, propulsion, hull length, issuing county treasurer's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. If a motorboat does not have a hull identification number, the state shall assign a hull identification number.

An assignment of certificate of title shall appear on each certificate of title and shall include a statement that the owner of the motorboat assigns all his or her right, title, and interest in the motorboat, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner.

A reassignment by a dealer shall appear on each certificate of title and shall include a statement that the dealer assigns all his or her right, title, and interest in the motorboat, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient. The department may, with the approval of the Attorney General, require additional information on such forms.

The county treasurer, subject to the approval of the department, shall assign a distinguishing hull identification number to any homebuilt motorboat or any motorboat manufactured prior to November 1, 1972. Hull identification numbers shall be assigned and affixed in conformity with the Federal Boat Safety Act of 1971. The county treasurer shall charge a nonrefundable fee of twenty dollars for each hull identification number and shall remit the fee to the department. The department shall remit the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1994, LB 123, § 14; Laws 1996, LB 464, § 22; Laws 1997, LB 720, § 7; Laws 2012, LB801, § 22.

37-1287 Fees; disposition.

(1) The county treasurers or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county treasurers shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county treasurers or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county treasurers or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county treasurers or

the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county treasurers shall remit fees due the State Treasurer under this section monthly and not later than the fifteenth day of the month following collection. The county treasurers shall credit fees not due to the State Treasurer to their respective county general fund.

Source: Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8; Laws 2011, LB135, § 1; Laws 2012, LB801, § 23.

37-1289 Violations; penalty.

It shall be a Class III misdemeanor to (1) operate in this state a motorboat for which a certificate of title is required without having a certificate of title or upon which the certificate of title has been canceled, (2) acquire, purchase, hold, or display for sale a new motorboat without having obtained a manufacturer's or importer's certificate or a certificate of title therefor, (3) fail to surrender any certificate of title or any certificate of number upon cancellation of the certificate by the county treasurer or the Department of Motor Vehicles and notice thereof, (4) fail to surrender the certificate of title to the county treasurer in case of the destruction or dismantling or change of a motorboat in such respect that it is not the motorboat described in the certificate of title, (5) purport to sell or transfer a motorboat without delivering to the purchaser or transferee of the motorboat a certificate of title if required or a manufacturer's or importer's certificate thereto duly assigned to the purchaser, (6) knowingly alter or deface a certificate of title, or (7) violate any of the other provisions of sections 37-1275 to 37-1287.

Source: Laws 1994, LB 123, § 17; Laws 1996, LB 464, § 25; Laws 1997, LB 720, § 8; Laws 2012, LB801, § 24.

37-1290 Security interest perfected prior to January 1, 1997; treatment; notation of lien.

(1) Any security interest in a motorboat perfected prior to January 1, 1997, shall continue to be perfected (a) until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) until a motorboat certificate of title is issued and a lien noted pursuant to section 37-1282.

(2) Any lien noted on the face of a motorboat certificate of title or on an electronic certificate of title record after January 1, 1997, pursuant to subsection (1) of this section, on behalf of the holder of a security interest in the motorboat, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a motorboat certificate of title shall, upon request, surrender the motorboat certificate of title to a holder of a security interest in the motorboat which was perfected prior to January 1, 1997, to permit notation of a lien on the motorboat certificate of title and shall do such other acts as may be required to permit such notation.

(4) The assignment, release, or satisfaction of a security interest in a motorboat shall be governed by the laws under which it was perfected.

Source: Laws 1994, LB 123, § 18; Laws 1999, LB 550, § 8; Laws 2009, LB202, § 9.

37-1291 Nontransferable certificate of title; issued; when; effect.

When an insurance company authorized to do business in Nebraska acquires a motorboat which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the motorboat has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county treasurer. A nontransferable certificate of title shall be issued in the same manner and for the same fee as provided for a certificate of title in sections 37-1275 to 37-1287 and shall be on a form prescribed by the Department of Motor Vehicles.

A motorboat which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under sections 37-1275 to 37-1287.

When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the motorboat has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the motorboat.

Source: Laws 1978, LB 21, § 74; Laws 1989, LB 195, § 11; Laws 1993, LB 235, § 44; R.S.Supp.,1993, § 37-1274; Laws 1994, LB 123, § 20; Laws 1996, LB 464, § 26; Laws 1998, LB 922, § 402; Laws 1999, LB 176, § 126; Laws 2004, LB 560, § 4; Laws 2012, LB801, § 25.

37-1293 Salvage branded certificate of title; when issued; procedure.

When an insurance company acquires a salvage motorboat through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage motorboat for which a total loss settlement is made unless the owner of the motorboat elects to retain the motorboat. If the owner elects to retain the motorboat, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the motorboat. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer. The county

treasurer shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the motorboat.

Source: Laws 2004, LB 560, § 6; Laws 2012, LB801, § 26.

37-1295 Certificate of title; disclosures required.

A certificate of title which is issued on or after January 1, 2005, shall disclose in writing, from any records readily accessible to the Department of Motor Vehicles or county officials or a peace officer, anything which indicates that the motorboat was previously issued a title in another jurisdiction that bore any word or symbol signifying that the motorboat was damaged, including, but not limited to, older model salvage, unbuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

Source: Laws 2004, LB 560, § 8; Laws 2011, LB667, § 20.

37-1296 Acquisition of salvage motorboat without salvage branded certificate of title; duties.

Any person who acquires ownership of a salvage motorboat, for which he or she does not obtain a salvage branded certificate of title, shall surrender the certificate of title to the county treasurer and make application for a salvage branded certificate of title within thirty days after acquisition or prior to the sale or resale of the motorboat or any major component part of such motorboat or use of any major component part of the motorboat, whichever occurs earlier.

Source: Laws 2004, LB 560, § 9; Laws 2012, LB801, § 27.

ARTICLE 13

NEBRASKA SHOOTING RANGE PROTECTION ACT

Section

- 37-1301. Act, how cited.
- 37-1302. Terms, defined.
- 37-1303. Rules and regulations; shooting range performance standards; review.
- 37-1304. Existing shooting range; effect of zoning provisions.
- 37-1305. Existing shooting range; effect of noise provisions.
- 37-1306. Discharge of firearm at shooting range; how treated.
- 37-1307. Existing shooting range; permitted activities.
- 37-1308. Hours of operation.
- 37-1309. Presumption with respect to noise.
- 37-1310. Regulation of location and construction; limit on taking of property.

37-1301 Act, how cited.

Sections 37-1301 to 37-1310 shall be known and may be cited as the Nebraska Shooting Range Protection Act.

Source: Laws 2009, LB503, § 1.

37-1302 Terms, defined.

For purposes of the Nebraska Shooting Range Protection Act:

- (1) Firearm has the same meaning as in section 28-1201;
- (2) Person means an individual, association, proprietorship, partnership, corporation, club, political subdivision, or other legal entity;

(3) Shooting range means an area or facility designated or operated primarily for the use of firearms or archery and which is operated in compliance with the act and the shooting range performance standards. Shooting range excludes shooting preserves or areas used for law enforcement or military training; and

(4) Shooting range performance standards means the revised edition of the National Rifle Association's range source book titled A Guide To Planning And Construction adopted by the National Rifle Association, as such book existed on January 1, 2009, for the safe operation of shooting ranges.

Source: Laws 2009, LB503, § 2.

37-1303 Rules and regulations; shooting range performance standards; review.

(1) The Game and Parks Commission shall adopt and promulgate as rules and regulations the shooting range performance standards.

(2) The commission shall review the shooting range performance standards at least once every five years and revise them if necessary for the continuing safe operation of shooting ranges.

Source: Laws 2009, LB503, § 3.

37-1304 Existing shooting range; effect of zoning provisions.

Any shooting range that is existing and lawful may continue to operate as a shooting range notwithstanding, and without regard to, any law, rule, regulation, ordinance, or resolution related to zoning enacted thereafter by a city, county, village, or other political subdivision of the state, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 4.

37-1305 Existing shooting range; effect of noise provisions.

Any shooting range that is existing and lawful may continue to operate as a shooting range notwithstanding, and without regard to, any law, rule, regulation, ordinance, or resolution related to noise enacted thereafter by any city, county, village, or other political subdivision of the state, except as provided in section 37-1308, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 5.

37-1306 Discharge of firearm at shooting range; how treated.

No law, rule, regulation, ordinance, or resolution relating to the discharge of a firearm at a shooting range with respect to any shooting range existing and lawful shall be enforced by any city, county, village, or other political subdivision, except as provided in section 37-1308, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 6.

37-1307 Existing shooting range; permitted activities.

A shooting range that is existing and lawful shall be permitted to do any of the following if done in compliance with the shooting range performance standards and generally applicable building and safety codes:

(1) Repair, remodel, or reinforce any improvement or facilities or building or structure as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;

(2) Reconstruct, repair, rebuild, or resume the use of a facility or building; or

(3) Do anything authorized under generally recognized operation practices, including, but not limited to:

(a) Expand or enhance its membership or opportunities for public participation; and

(b) Expand or increase facilities or activities within the existing range area.

Source: Laws 2009, LB503, § 7.

37-1308 Hours of operation.

A city, county, village, or other political subdivision of the state may limit the hours between 10:00 p.m. and 7:00 a.m. that an outdoor shooting range may operate.

Source: Laws 2009, LB503, § 8.

37-1309 Presumption with respect to noise.

A person who is shooting in compliance with the shooting range performance standards at a shooting range between the hours of 7:00 a.m. and 10:00 p.m. is presumed not to be engaging in unlawful conduct merely because of the noise caused by the shooting.

Source: Laws 2009, LB503, § 9.

37-1310 Regulation of location and construction; limit on taking of property.

(1) Except as otherwise provided in the Nebraska Shooting Range Protection Act, the act does not prohibit a city, county, village, or other political subdivision of the state from regulating the location and construction of a shooting range.

(2) A person, the state, or any city, county, village, or other political subdivision of the state shall not take title to property which has a shooting range by condemnation, eminent domain, or similar process when the proposed use of the property would be for shooting-related activities or recreational activities or for private commercial development. This subsection does not limit the exercise of eminent domain or easement necessary for infrastructure additions or improvements, such as highways, waterways, or utilities.

Source: Laws 2009, LB503, § 10.

ARTICLE 14

NEBRASKA INVASIVE SPECIES COUNCIL

Section

37-1401. Legislative findings.

37-1402. Invasive species, defined.

37-1403. Nebraska Invasive Species Council; created; members; expenses; Game and Parks Commission; rules and regulations; meetings.

37-1404. Nebraska Invasive Species Council; duties.

37-1405. Adaptive management plan; contents.

37-1406. Adaptive management plan; completion; update; Nebraska Invasive Species Council; reports; subcommittees.

37-1401 Legislative findings.

The Legislature finds that:

(1) The land, water, and other resources of Nebraska are being severely impacted by the invasion of an increasing number of harmful invasive species;

(2) These impacts are resulting in damage to Nebraska's environment and causing economic hardships; and

(3) The multitude of public and private organizations with an interest in controlling and preventing the spread of harmful invasive species in Nebraska need a mechanism for cooperation, communication, collaboration, and developing a statewide plan of action to meet these threats.

Source: Laws 2012, LB391, § 11.

37-1402 Invasive species, defined.

For purposes of sections 37-1401 to 37-1406, invasive species means aquatic or terrestrial organisms not native to the region that cause economic or biological harm and are capable of spreading to new areas, and invasive species does not include livestock as defined in sections 54-1368 and 54-1902, honey bees, domestic pets, intentionally planted agronomic crops, or nonnative organisms that do not cause economic or biological harm.

Source: Laws 2012, LB391, § 12.

37-1403 Nebraska Invasive Species Council; created; members; expenses; Game and Parks Commission; rules and regulations; meetings.

(1) The Nebraska Invasive Species Council is created. Members of the council shall serve without compensation and shall not be reimbursed for expenses associated with their service on the council. The Game and Parks Commission shall provide administrative support to the council to carry out the council's duties, and the commission may adopt and promulgate rules and regulations to carry out sections 37-1401 to 37-1406.

(2) Voting members of the council shall be appointed by the Governor and shall include a representative of:

(a) An electric generating utility;

(b) The Department of Agriculture;

(c) The Game and Parks Commission;

(d) The Nebraska Forest Service of the University of Nebraska Institute of Agriculture and Natural Resources;

(e) The University of Nebraska-Lincoln;

(f) The Nebraska Cooperative Fish and Wildlife Research Unit of the University of Nebraska;

(g) The Nebraska Weed Control Association; and

(h) The Nebraska Association of Resources Districts.

(3) Voting members of the council shall also include up to five members at large appointed by the Governor who shall represent public interests, at least three of which shall represent agricultural land owner interests.

(4) Nonvoting, ex officio members of the council shall include a representative of:

(a) The Midwest Region of the National Park Service of the United States Department of the Interior;

(b) The Animal and Plant Health Inspection Service of the United States Department of Agriculture;

(c) The Natural Resources Conservation Service of the United States Department of Agriculture;

(d) The United States Geological Survey; and

(e) The Nature Conservancy, Nebraska Field Office.

(5) The council may seek additional advisory support from representatives of relevant federal, state, or local agencies as it deems necessary to accomplish its duties.

(6) The council shall select a chairperson from among its members. The council shall meet at the call of the chairperson or upon the request of a majority of the members.

Source: Laws 2012, LB391, § 13.

37-1404 Nebraska Invasive Species Council; duties.

The Nebraska Invasive Species Council shall:

(1) Recommend action to minimize the effects of harmful invasive species on Nebraska's citizens in order to promote the economic and environmental well-being of the state;

(2) Develop and periodically update a statewide adaptive management plan for invasive species as described in section 37-1405;

(3) Serve as a forum for discussion, identification, and understanding of invasive species issues;

(4) Facilitate the communication, cooperation, and coordination of local, state, federal, private, and nongovernmental entities for the prevention, control, and management of invasive species;

(5) Assist with public outreach and awareness of invasive species issues; and

(6) Provide information to the Legislature for decision making, planning, and coordination of invasive species management and prevention.

Source: Laws 2012, LB391, § 14.

37-1405 Adaptive management plan; contents.

The adaptive management plan required under section 37-1404 will address the following:

(1) Statewide coordination and intergovernmental cooperation;

(2) Prioritization of invasive species response and management;

(3) Early detection and prevention of new invasive species through deliberate or unintentional introduction;

(4) Inventory and monitoring of invasive species;

(5) Identification of research and information gaps;

(6) Public outreach and education;

(7) Identification of funding and resources available for invasive species prevention, control, and management; and

(8) Recommendations for legislation regarding invasive species issues.

Source: Laws 2012, LB391, § 15.

37-1406 Adaptive management plan; completion; update; Nebraska Invasive Species Council; reports; subcommittees.

(1) The adaptive management plan required under section 37-1404 shall be updated at least once every three years following its initial development. The plan shall be submitted to the Governor and the Agriculture Committee of the Legislature. The plan submitted to the committee shall be submitted electronically.

(2) The Nebraska Invasive Species Council shall submit an annual report of its activities to the Governor and the Agriculture Committee of the Legislature by December 15 of each year. The annual report shall include an evaluation of progress made in the preceding year. The report submitted to the committee shall be submitted electronically.

(3) The council shall complete the initial adaptive management plan within three years after April 6, 2012.

(4) Prior to the start of the 2015 legislative session, the council shall submit electronically a report to the Agriculture Committee of the Legislature that makes recommendations as to the extension or modification of the council.

(5) The council may establish advisory and technical subcommittees that the council considers necessary to aid and advise it in the performance of its functions.

Source: Laws 2012, LB391, § 16; Laws 2013, LB222, § 5.

ARTICLE 15

DEER DONATION PROGRAM

Section

37-1501. Purpose of sections.

37-1502. Terms, defined.

37-1503. Deer covered by program.

37-1504. Applicant for permit; option to contribute to fund.

37-1505. Commission; duties; rules and regulations.

37-1506. Commission; promote program.

37-1507. Commission; meat processors; contracts authorized; duties.

37-1508. Meat processor; participation; annual contract; record required; payment; liability.

37-1509. Commission; additional contracts authorized; matching grants.

37-1510. Hunters Helping the Hungry Cash Fund; created; use; investment.

37-1501 Purpose of sections.

The purpose of sections 37-1501 to 37-1510 is to establish procedures for the administration of a deer donation program and to encourage hunters to harvest deer to donate to a program to feed residents of Nebraska who are in need.

Source: Laws 2012, LB928, § 5.

37-1502 Terms, defined.

For purposes of sections 37-1501 to 37-1510:

(1) Deer means any wild deer legally taken in Nebraska and deer confiscated as legal evidence if the confiscated carcass is considered by a conservation officer to be in good condition for donation under the program;

(2) Field dressed means properly bled and cleaned of the internal organs;

(3) Meat processor means any business that is licensed to process meat for retail customers by the Department of Agriculture, the United States Department of Agriculture, or a neighboring state's department that is similar to Nebraska's; and

(4) Program means the deer donation program established pursuant to sections 37-1501 to 37-1510.

Source: Laws 2012, LB928, § 6.

37-1503 Deer covered by program.

Deer is the only species of wildlife covered by the program. To be accepted, the entire field-dressed deer carcass shall be donated, but the hunter may keep the antlers, head, and cape.

Source: Laws 2012, LB928, § 7.

37-1504 Applicant for permit; option to contribute to fund.

On or before July 1, 2012, the commission shall provide each applicant the option on the application for any type of hunting permit authorizing the taking of deer to indicate that the applicant may designate an amount in addition to the permit fee to be credited to the Hunters Helping the Hungry Cash Fund.

Source: Laws 2012, LB928, § 8.

37-1505 Commission; duties; rules and regulations.

(1) The commission shall set a fair market price for the processing cost of deer donated to the program. To set a fair market price, the commission shall consider prices for similar deer processing services paid by retail customers in Nebraska and nearby states and shall establish an annual per-deer processing payment to be made to meat processors to the extent that money is available in the Hunters Helping the Hungry Cash Fund.

(2) The commission shall adopt and promulgate rules and regulations necessary to carry out the program.

Source: Laws 2012, LB928, § 9.

37-1506 Commission; promote program.

The commission shall promote the harvesting of deer by hunters and the donation of deer at meat processors participating in the program to the extent that money is available in the Hunters Helping the Hungry Cash Fund.

Source: Laws 2012, LB928, § 10.

37-1507 Commission; meat processors; contracts authorized; duties.

The commission may enlist as many meat processors as available to participate in the program and shall enter into contracts with meat processors as described in section 37-1508 subject to available funding in the Hunters Helping the Hungry Cash Fund. The commission shall provide forms for donation of deer by hunters and posters for meat processors to advertise their participation. The commission shall provide informational and promotional materials to meat processors regarding the program.

Source: Laws 2012, LB928, § 11.

37-1508 Meat processor; participation; annual contract; record required; payment; liability.

(1) To participate in the program, each meat processor shall enter into an annual contract with the commission which details the meat processor's participation.

(2) Meat processors shall accept the entire field-dressed carcass of a donated deer according to the terms of their respective contracts with the commission and shall not assess any fees or costs to donors, recipients, or participants. Information from the donor is required for each donated deer and shall be submitted on forms provided by the commission. Payment shall not be made to a meat processor without this information.

(3) Meat processors shall accept a donated deer if the meat processor determines the venison is in acceptable condition.

(4) Prior to receiving payment, a meat processor shall be required to provide to the commission a record of each donated deer that includes information required by the commission. Payments shall be made to meat processors within forty-five days after submittal of a complete and accurate invoice according to the terms of their respective contracts with the commission.

(5) The commission shall not be liable for the safety, quality, or condition of deer accepted by meat processors or recipients or consumed by participants in the program.

Source: Laws 2012, LB928, § 12.

37-1509 Commission; additional contracts authorized; matching grants.

The commission, at its own discretion, may enter into contracts with other entities for purposes of executing or expanding the program. The commission may include the offer of matching grants to pay for deer processing to entities that acquire funding from sources other than the state to pay for expenses of the program.

Source: Laws 2012, LB928, § 13.

37-1510 Hunters Helping the Hungry Cash Fund; created; use; investment.

The Hunters Helping the Hungry Cash Fund is created. The fund shall include amounts designated for the fund pursuant to section 37-1504 and revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources intended for the fund. The fund shall be administered by the commission to carry out the program. The annual expenditures from the fund shall be limited only by the available balance of the fund. The commission shall not be obligated to provide payments from the fund or pay any other expenses in excess of the available balance in the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2012, LB928, § 14.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.



CHAPTER 38

HEALTH OCCUPATIONS AND PROFESSIONS

Article.

1. Uniform Credentialing Act. 38-101 to 38-1,140.
5. Audiology and Speech-Language Pathology Practice Act. 38-507 to 38-524.
10. Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. 38-1057.
11. Dentistry Practice Act. 38-1130.
12. Emergency Medical Services Practice Act. 38-1207 to 38-1232.
14. Funeral Directing and Embalming Practice Act. 38-1425 to 38-1427.
15. Hearing Instrument Specialists Practice Act. 38-1501 to 38-1518.
19. Medical Radiography Practice Act. 38-1901 to 38-1918.
20. Medicine and Surgery Practice Act. 38-2001 to 38-2062.
21. Mental Health Practice Act. 38-2121, 38-2133.
22. Nurse Practice Act. 38-2218.
23. Nurse Practitioner Practice Act. 38-2301 to 38-2324.
24. Nursing Home Administrator Practice Act. 38-2401 to 38-2426.
26. Optometry Practice Act. 38-2604 to 38-2622.
28. Pharmacy Practice Act. 38-2801 to 38-2894.
32. Respiratory Care Practice Act. 38-3214, 38-3215.
33. Veterinary Medicine and Surgery Practice Act. 38-3301 to 38-3335.
34. Genetic Counseling Practice Act. 38-3401 to 38-3425.

ARTICLE 1

UNIFORM CREDENTIALING ACT

Section

- 38-101. Act, how cited.
- 38-121. Practices; credential required.
- 38-129. Issuance of credential; qualifications.
- 38-131. Criminal background check; when required.
- 38-151. Credentialing system; administrative costs; how paid.
- 38-155. Credentialing fees; establishment and collection.
- 38-157. Professional and Occupational Credentialing Cash Fund; created; use; investment.
- 38-165. Boards; public members; qualifications.
- 38-167. Boards; designated; change in name; effect.
- 38-178. Disciplinary actions; grounds.
- 38-182. Disciplinary actions; credential to operate business; grounds.
- 38-186. Credential; discipline; petition by Attorney General; hearing; department; powers and duties.
- 38-1,126. Report; confidential; immunity; use of documents.
- 38-1,127. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty.
- 38-1,140. Consultation with licensed veterinarian; conduct authorized.

38-101 Act, how cited.

Sections 38-101 to 38-1,140 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;

- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Emergency Medical Services Practice Act;
- (12) The Environmental Health Specialists Practice Act;
- (13) The Funeral Directing and Embalming Practice Act;
- (14) The Genetic Counseling Practice Act;
- (15) The Hearing Instrument Specialists Practice Act;
- (16) The Licensed Practical Nurse-Certified Practice Act;
- (17) The Massage Therapy Practice Act;
- (18) The Medical Nutrition Therapy Practice Act;
- (19) The Medical Radiography Practice Act;
- (20) The Medicine and Surgery Practice Act;
- (21) The Mental Health Practice Act;
- (22) The Nurse Practice Act;
- (23) The Nurse Practitioner Practice Act;
- (24) The Nursing Home Administrator Practice Act;
- (25) The Occupational Therapy Practice Act;
- (26) The Optometry Practice Act;
- (27) The Perfusion Practice Act;
- (28) The Pharmacy Practice Act;
- (29) The Physical Therapy Practice Act;
- (30) The Podiatry Practice Act;
- (31) The Psychology Practice Act;
- (32) The Respiratory Care Practice Act;
- (33) The Veterinary Medicine and Surgery Practice Act; and
- (34) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,139 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (33) of this section, to articles within Chapter 38.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1;

Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp., 2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol and Drug Counseling Practice Act, see section 38-301.
Athletic Training Practice Act, see section 38-401.
Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Chiropractic Practice Act, see section 38-801.
Clinical Nurse Specialist Practice Act, see section 38-901.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dentistry Practice Act, see section 38-1101.
Emergency Medical Services Practice Act, see section 38-1201.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Genetic Counseling Practice Act, see section 38-3401.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Massage Therapy Practice Act, see section 38-1701.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Home Administrator Practice Act, see section 38-2401.
Occupational Therapy Practice Act, see section 38-2501.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Physical Therapy Practice Act, see section 38-2901.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.
Respiratory Care Practice Act, see section 38-3201.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-121 Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

- (a) Acupuncture;
- (b) Advanced practice nursing;
- (c) Alcohol and drug counseling;
- (d) Asbestos abatement, inspection, project design, and training;
- (e) Athletic training;

(f) Audiology;
(g) Speech-language pathology;
(h) Body art;
(i) Chiropractic;
(j) Cosmetology;
(k) Dentistry;
(l) Dental hygiene;
(m) Electrology;
(n) Emergency medical services;
(o) Esthetics;
(p) Funeral directing and embalming;
(q) Genetic counseling;
(r) Hearing instrument dispensing and fitting;
(s) Lead-based paint abatement, inspection, project design, and training;
(t) Licensed practical nurse-certified;
(u) Massage therapy;
(v) Medical nutrition therapy;
(w) Medical radiography;
(x) Medicine and surgery;
(y) Mental health practice;
(z) Nail technology;
(aa) Nursing;
(bb) Nursing home administration;
(cc) Occupational therapy;
(dd) Optometry;
(ee) Osteopathy;
(ff) Perfusion;
(gg) Pharmacy;
(hh) Physical therapy;
(ii) Podiatry;
(jj) Psychology;
(kk) Radon detection, measurement, and mitigation;
(ll) Respiratory care;
(mm) Veterinary medicine and surgery;
(nn) Public water system operation; and
(oo) Constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

- (a) Registered environmental health specialist;
- (b) Certified marriage and family therapist;

- (c) Certified professional counselor; or
- (d) Social worker.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

- (a) Body art;
- (b) Cosmetology;
- (c) Emergency medical services;
- (d) Esthetics;
- (e) Funeral directing and embalming;
- (f) Massage therapy; or
- (g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws 1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6; Laws 2012, LB831, § 27.

38-129 Issuance of credential; qualifications.

No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation. A credential may only be issued to a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29; Laws 2011, LB225, § 1.

38-131 Criminal background check; when required.

(1) An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information

check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2; Laws 2011, LB687, § 1.

38-151 Credentialing system; administrative costs; how paid.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, the periodic review under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166;

Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51; Laws 2012, LB834, § 1.

Cross References

Fees of state boards, see sections 33-151 and 33-152.

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection.

(1) The department, with the recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 38-151, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

(a) Initial credentials, which include, but are not limited to:

(i) Licensure, certification, or registration;

(ii) Add-on or specialty credentials;

(iii) Temporary, provisional, or training credentials; and

(iv) Supervisory or collaborative relationship credentials;

(b) Applications to renew licenses, certifications, and registrations;

(c) Approval of continuing education courses and other methods of continuing competency; and

(d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date or its reinstatement date and the initial credentialing or renewal fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing or renewal fee, whichever is greater, for the initial or reinstated credential. The initial or reinstated credential shall be valid until the next subsequent renewal date.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55; Laws 2012, LB773, § 1.

38-157 Professional and Occupational Credentialing Cash Fund; created; use; investment.

(1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156 and the Nebraska Regulation of Health Professions Act.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer any money in the Nebraska Regulation of Health Professions Fund on July 19, 2012, to the Professional and Occupational Credentialing Cash Fund.

(3) Any money in the Professional and Occupational Credentialing Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57; Laws 2009, First Spec. Sess., LB3, § 19; Laws 2012, LB834, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Regulation of Health Professions Act, see section 71-6201.

Nebraska State Funds Investment Act, see section 72-1260.

38-165 Boards; public members; qualifications.

A public member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. At the time of appointment and while serving as a board member, a public member appointed to a board on or after December 1, 2008, shall:

- (1) Have been a resident of this state for one year;
- (2) Remain a resident of Nebraska while serving as a board member;
- (3) Have attained the age of nineteen years;
- (4) Represent the interests and viewpoints of the public;
- (5) Not hold an active credential in any profession or business which is subject to the Uniform Credentialing Act, issued in Nebraska or in any other jurisdiction, at any time during the five years prior to appointment;
- (6) Not be eligible for appointment to a board which regulates a profession or business in which that person has ever held a credential;
- (7) Not be or not have been, at any time during the year prior to appointment, an employee of a member of a profession credentialed by the department, of a facility credentialed pursuant to the Health Care Facility Licensure Act, of a business credentialed pursuant to the Uniform Credentialing Act, or of a business regulated by the board to which the appointment is being made;

(8) Not be the parent, child, spouse, or household member of any person presently regulated by the board to which the appointment is being made;

(9) Have no material financial interest in the profession or business regulated by such board; and

(10) Not be a member or employee of the legislative or judicial branch of state government.

Source: Laws 2007, LB463, § 65; Laws 2014, LB132, § 10.
Effective date July 18, 2014.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-167 Boards; designated; change in name; effect.

(1) Boards shall be designated as follows:

(a) Board of Advanced Practice Registered Nurses;

(b) Board of Alcohol and Drug Counseling;

(c) Board of Athletic Training;

(d) Board of Audiology and Speech-Language Pathology;

(e) Board of Chiropractic;

(f) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(g) Board of Dentistry;

(h) Board of Emergency Medical Services;

(i) Board of Registered Environmental Health Specialists;

(j) Board of Funeral Directing and Embalming;

(k) Board of Hearing Instrument Specialists;

(l) Board of Massage Therapy;

(m) Board of Medical Nutrition Therapy;

(n) Board of Medical Radiography;

(o) Board of Medicine and Surgery;

(p) Board of Mental Health Practice;

(q) Board of Nursing;

(r) Board of Nursing Home Administration;

(s) Board of Occupational Therapy Practice;

(t) Board of Optometry;

(u) Board of Pharmacy;

(v) Board of Physical Therapy;

(w) Board of Podiatry;

(x) Board of Psychology;

(y) Board of Respiratory Care Practice;

(z) Board of Veterinary Medicine and Surgery; and

(aa) Water Well Standards and Contractors' Licensing Board.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of

any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 355, § 11; Laws 1986, LB 579, § 24; Laws 1988, LB 557, § 16; Laws 1988, LB 1100, § 8; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67; Laws 2009, LB195, § 7.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

- (1) Misrepresentation of material facts in procuring or attempting to procure a credential;
- (2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
- (3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
- (4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;
- (5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
- (6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;
- (7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
- (8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
- (9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(12) Use of untruthful, deceptive, or misleading statements in advertisements;

(13) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(14) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(15) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(16) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(19) Failure to maintain the requirements necessary to obtain a credential;

(20) Violation of an order issued by the department;

(21) Violation of an assurance of compliance entered into under section 38-1,108;

(22) Failure to pay an administrative penalty;

(23) Unprofessional conduct as defined in section 38-179; or

(24) Violation of the Automated Medication Systems Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2.

Cross References

Automated Medication Systems Act, see section 71-2444.

Uniform Controlled Substances Act, see section 28-401.01.

Uniform Deceptive Trade Practices Act, see section 87-306.

38-182 Disciplinary actions; credential to operate business; grounds.

A credential to operate a business may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the following grounds:

(1) Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under such act relating to the applicable business;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of an individual served or employed by the business;

(4) Failure to allow an agent or employee of the department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(5) Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the department or is perceived to have submitted a complaint or information to the department; or

(6) Failure to file a report required by section 71-552.

Source: Laws 2007, LB463, § 82; Laws 2011, LB591, § 3.

38-186 Credential; discipline; petition by Attorney General; hearing; department; powers and duties.

(1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in subdivisions (1) through (18) and (20) through (32) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 2007, LB463, § 86; Laws 2012, LB831, § 28.

38-1,126 Report; confidential; immunity; use of documents.

(1) A report made to the department under section 38-1,124 or 38-1,125 shall be confidential.

(2) Any person making such a report to the department, except a person who is self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of

documents, records, or other information to the department under section 38-1,124 or 38-1,125.

(3) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under section 38-1,124 or 38-1,125. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under section 38-1,124 or 38-1,125 only because he or she attended or testified before such committee.

(4) Documents from original sources shall not be construed as immune from discovery or use in actions under section 38-1,125.

Source: Laws 2007, LB463, § 126; Laws 2011, LB431, § 12.

Cross References

Health Care Quality Improvement Act, see section 71-7904.

Patient Safety Improvement Act, see section 71-8701.

38-1,127 Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty.

(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a profession regulated under the Uniform Credentialing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a credential holder, including settlements made prior to suit, arising out of the acts or omissions of the credential holder; or

(b) Takes action adversely affecting the privileges or membership of a credential holder in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to

the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 1994, LB 1223, § 12; Laws 1995, LB 563, § 3; Laws 1996, LB 414, § 2; Laws 1997, LB 138, § 43; Laws 1997, LB 222, § 5; Laws 2000, LB 819, § 84; Laws 2000, LB 1115, § 13; Laws 2005, LB 256, § 22; Laws 2005, LB 361, § 33; R.S.Supp.,2006, § 71-168.02; Laws 2007, LB463, § 127; Laws 2011, LB431, § 13.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Health Care Quality Improvement Act, see section 71-7904.

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Patient Safety Improvement Act, see section 71-8701.

38-1,140 Consultation with licensed veterinarian; conduct authorized.

Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act may consult with a licensed veterinarian or perform collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian. Engaging in such conduct is hereby authorized and shall not be considered a part of the credential holder's scope of practice or a violation of the credential holder's scope of practice.

Source: Laws 2008, LB928, § 3; Laws 2009, LB463, § 1.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Section

38-507. Practice of audiology, defined.

38-511. Practice of audiology or speech-language pathology; act, how construed.

38-512. Sale of hearing instruments; audiologist; applicability of act.

38-524. Audiology or speech-language pathology assistant; acts prohibited.

38-507 Practice of audiology, defined.

Practice of audiology means the application of evidence-based practice in clinical decisionmaking for the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments, including (1) cerumen removal from the cartilaginous outer one-third portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices and (2) evaluation, selection, fitting, and dispensing of hearing instruments, external processors of implantable hearing instruments, and assistive technology devices as part of a comprehensive audiological rehabilitation program. Practice of audiology does not include the practice of medical diagnosis, medical treatment, or surgery.

Source: Laws 2007, LB247, § 67; Laws 2007, LB463, § 192; Laws 2009, LB195, § 8.

38-511 Practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict:

(1) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person employed as a speech-language pathologist or audiologist by the federal government;

(2) A physician from engaging in the practice of medicine and surgery or any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery under the supervision of a physician;

(3) A person licensed as a hearing instrument specialist in this state from engaging in the fitting, selling, and servicing of hearing instruments or performing such other duties as defined in the Hearing Instrument Specialists Practice Act;

(4) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech-language pathologist or audiologist issued by the State Department of Education, if such person performs speech-language pathology or audiology services solely as a part of his or her duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of the Audiology and Speech-Language Pathology Practice Act;

(5) The clinical practice in audiology or speech-language pathology required for students enrolled in an accredited college or university pursuing a major in audiology or speech-language pathology, if such clinical practices are supervised by a person licensed to practice audiology or speech-language pathology and if the student is designated by a title such as student clinician or other title clearly indicating the training status; or

(6) The utilization of a speech aide or other personnel employed by a public school, educational service unit, or other private or public educational institution working under the direct supervision of a credentialed speech-language pathologist.

Source: Laws 1978, LB 406, § 14; Laws 1985, LB 129, § 15; Laws 1990, LB 828, § 1; Laws 2001, LB 209, § 11; R.S.1943, (2003), § 71-1,187; Laws 2007, LB247, § 28; Laws 2007, LB463, § 196; Laws 2009, LB195, § 9.

Cross References

Hearing Instrument Specialists Practice Act, see section 38-1501.

38-512 Sale of hearing instruments; audiologist; applicability of act.

Any audiologist who engages in the sale of hearing instruments shall not be exempt from the Hearing Instrument Specialists Practice Act.

Source: Laws 1978, LB 406, § 23; R.S.1943, (2003), § 71-1,196; Laws 2007, LB463, § 197; Laws 2009, LB195, § 10.

Cross References

Hearing Instrument Specialists Practice Act, see section 38-1501.

38-524 Audiology or speech-language pathology assistant; acts prohibited.

An audiology or speech-language pathology assistant shall not:

- (1) Evaluate or diagnose any type of communication disorder;
- (2) Evaluate or diagnose any type of dysphagia;
- (3) Interpret evaluation results or treatment progress;
- (4) Consult or counsel, independent of the licensed audiologist or speech-language pathologist, with a patient, a patient's family, or staff regarding the nature or degree of communication disorders or dysphagia;
- (5) Plan patient treatment programs;
- (6) Represent himself or herself as an audiologist or speech-language pathologist or as a provider of speech, language, swallowing, or hearing treatment or assessment services;
- (7) Independently initiate, modify, or terminate any treatment program; or
- (8) Fit or dispense hearing instruments.

Source: Laws 1985, LB 129, § 29; Laws 1988, LB 1100, § 75; R.S.1943, (2003), § 71-1,195.07; Laws 2007, LB247, § 35; Laws 2007, LB463, § 209; Laws 2009, LB195, § 11.

ARTICLE 10**COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT**

Section

38-1057. Board; members; qualifications.

38-1057 Board; members; qualifications.

(1) The board shall consist of ten professional members, one owner of a tanning facility as defined in section 71-3902, and two public members appointed pursuant to section 38-158. The professional and public members shall meet the requirements of sections 38-164 and 38-165, respectively.

(2) The professional members shall include:

- (a) One school owner who is also licensed as either a cosmetologist, nail technician, or esthetician;
- (b) One salon owner who is licensed as a cosmetologist;
- (c) Two cosmetologists who are not school owners;
- (d) One nail technician who is not a school owner;
- (e) One esthetician who is not a school owner;
- (f) One electrologist;
- (g) One practitioner of body art;
- (h) One nail technology instructor or esthetics instructor who is not a school owner; and
- (i) One cosmetology instructor who is not a school owner.

(3) No members of the board who are school owners, salon owners, tanning facility owners, electrologists, nail technicians, instructors, cosmetologists, or practitioners of body art may be affiliated with the same establishment.

Source: Laws 1986, LB 318, § 35; Laws 1987, LB 543, § 3; Laws 1994, LB 1223, § 25; Laws 1995, LB 83, § 15; Laws 1999, LB 68, § 21;

Laws 2002, LB 241, § 18; Laws 2005, LB 382, § 9; R.S.Supp.,2006, § 71-374; Laws 2007, LB463, § 319; Laws 2014, LB132, § 11.

Effective date July 18, 2014.

ARTICLE 11

DENTISTRY PRACTICE ACT

Section

38-1130. Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report.

38-1130 Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report.

(1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and inservice training sessions on dental health; and all of the duties that any dental assistant is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services to children in a public health setting or in a health care or related facility: Oral prophylaxis to healthy children who do not require antibiotic premedication; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of current licensure and professional liability insurance coverage. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department on a form developed and provided by the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4)(a) The department may authorize a licensed dental hygienist who has completed three thousand hours of clinical experience to perform the following functions in the conduct of public health-related services to adults in a public health setting or in a health care or related facility: Oral prophylaxis; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of

current licensure and professional liability insurance coverage, and (iii) providing evidence of three thousand hours of clinical experience. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report on a form developed and provided by the department authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(5) The department shall compile the data from the reports provided under subdivisions (3)(c)(i) and (4)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health.

(6) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

(7) Within five years after September 6, 2013, the Health and Human Services Committee of the Legislature shall evaluate the services provided by dental hygienists pursuant to this section to ascertain the effectiveness of such services in the delivery of oral health care and shall provide a report on such evaluation to the Legislature. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463; Laws 2013, LB484, § 1.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section

- 38-1207. Emergency medical service, defined; amendment of section; how construed.
- 38-1215. Board; members; terms; meetings; removal.
- 38-1216. Board; duties.
- 38-1217. Rules and regulations.
- 38-1218. Licensure classification.
- 38-1219. Department; additional rules and regulations.
- 38-1221. License; requirements; term.
- 38-1224. Duties and activities authorized; limitations.
- 38-1232. Individual liability.

38-1207 Emergency medical service, defined; amendment of section; how construed.

Emergency medical service means the organization responding to a perceived individual need for medical care in order to prevent loss of life or

aggravation of physiological or psychological illness or injury. The amendment of this section by Laws 2012, LB646, shall not be construed to modify or expand or authorize the modification or expansion of the scope of practice of any licensure classifications established pursuant to section 38-1217.

Source: Laws 2007, LB463, § 491; Laws 2012, LB646, § 1.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active out-of-hospital emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Of the seven members who are out-of-hospital emergency care providers, two shall be first responders or emergency medical responders, two shall be emergency medical technicians, one shall be an emergency medical technician-intermediate or an advanced emergency medical technician, and two shall be emergency medical technicians-paramedic or paramedics.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in out-of-hospital emergency medical care education, one member who is a registered nurse with at least five years of experience and active in out-of-hospital emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of out-of-hospital emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board there shall be at least one member who is a volunteer emergency medical care provider, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of

his or her term. Any vacancy in membership, other than by expiration of a term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment or has a licensure classification which is terminated under section 38-1217 when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp.,2006, § 71-5176; Laws 2007, LB463, § 499; Laws 2009, LB195, § 12.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1216 Board; duties.

In addition to any other responsibilities prescribed by the Emergency Medical Services Practice Act, the board shall:

(1) Promote the dissemination of public information and education programs to inform the public about out-of-hospital emergency medical care and other out-of-hospital medical information, including appropriate methods of medical self-help, first aid, and the availability of out-of-hospital emergency medical services training programs in the state;

(2) Provide for the collection of information for evaluation of the availability and quality of out-of-hospital emergency medical care, evaluate the availability and quality of out-of-hospital emergency medical care, and serve as a focal point for discussion of the provision of out-of-hospital emergency medical care;

(3) Review and comment on all state agency proposals and applications that seek funding for out-of-hospital emergency medical care;

(4) Establish model procedures for patient management in out-of-hospital medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during an out-of-hospital medical emergency;

(5) Not less than once each five years, undertake a review and evaluation of the act and its implementation together with a review of the out-of-hospital emergency medical care needs of the citizens of the State of Nebraska and submit electronically a report to the Legislature with any recommendations which it may have; and

(6) Identify communication needs of emergency medical services and make recommendations for development of a communications plan for a communications network for out-of-hospital emergency care providers and emergency medical services.

Source: Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500; Laws 2012, LB782, § 38.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

(1)(a) For licenses issued prior to September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) First responder; (ii) emergency medical technician; (iii) emergency medical technician-intermediate; and (iv) emergency medical technician-paramedic; and (b) for licenses issued on or after September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) Emergency medical responder; (ii) emergency medical technician; (iii) advanced emergency medical technician; and (iv) paramedic. The rules and regulations creating the classifications shall include the practices and procedures authorized for each classification, training and testing requirements, renewal and reinstatement requirements, and other criteria and qualifications for each classification determined to be necessary for protection of public health and safety. A person holding a license issued prior to September 1, 2010, shall be authorized to practice in accordance with the laws, rules, and regulations governing the license for the term of the license;

(2) Provide for temporary licensure of an out-of-hospital emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1)(b) of this section but has not completed the testing requirements for licensure under such subdivision. Temporary licensure shall be valid for one year or until a license is issued under such subdivision and shall not be subject to renewal. The rules and regulations shall include qualifications and training necessary for issuance of a temporary license, the practices and procedures authorized for a temporary licensee, and supervision required for a temporary licensee;

(3) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(4) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of out-of-hospital emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(5) Authorize out-of-hospital emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(6) Provide for the approval of training agencies and establish minimum standards for services provided by training agencies;

(7) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(8) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician medical director for use by any out-of-hospital emergency care provider or emergency medical service before or after adoption;

(9) Establish criteria for approval of organizations issuing cardiopulmonary resuscitation certification which shall include criteria for instructors, establishment of certification periods and minimum curricula, and other aspects of training and certification;

(10) Establish renewal and reinstatement requirements for out-of-hospital emergency care providers and emergency medical services and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for out-of-hospital emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the out-of-hospital emergency care provider is determined to be qualified;

(11) Establish criteria for deployment and use of automated external defibrillators as necessary for the protection of the public health and safety;

(12) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(13) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians-paramedic, or paramedics performing activities within their scope of practice at a hospital or health clinic under subsection (3) of section 38-1224. Such criteria shall include, but not be limited to: (a) Requirements for the orientation of registered nurses, physician assistants, and physicians involved in the supervision of such personnel; (b) supervisory and training requirements for the physician medical director or other person in charge of the medical staff at such hospital or health clinic; and (c) a requirement that such activities shall only be performed at the discretion of, and with the approval of, the governing authority of such hospital or health clinic. For purposes of this subdivision, health clinic has the definition found in section 71-416 and hospital has the definition found in section 71-419; and

(14) Establish criteria and requirements for emergency medical technicians-intermediate to renew licenses issued prior to September 1, 2010, and continue to practice after such classification has otherwise terminated under subdivision (1) of this section. The rules and regulations shall include the qualifications necessary to renew emergency medical technicians-intermediate licenses after September 1, 2010, the practices and procedures authorized for persons hold-

ing and renewing such licenses, and the renewal and reinstatement requirements for holders of such licenses.

Source: Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1; R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501; Laws 2009, LB195, § 13.

38-1218 Licensure classification.

(1) The Legislature adopts all parts of the United States Department of Transportation curricula, including appendices, and skills as the training requirements and permitted practices and procedures for the licensure classifications listed in subdivision (1)(a) of section 38-1217 until modified by the board by rule and regulation. The Legislature adopts the United States Department of Transportation National Emergency Medical Services Education Standards and the National Emergency Medical Services Scope of Practice for the licensure classifications listed in subdivision (1)(b) of section 38-1217 until modified by the board by rule and regulation. The board may approve curricula for the licensure classifications listed in subdivision (1) of section 38-1217.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the out-of-hospital emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of out-of-hospital emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

Source: Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502; Laws 2009, LB195, § 14.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

(1) Administer the Emergency Medical Services Practice Act;

(2) Provide for curricula which will allow out-of-hospital emergency care providers and users of automated external defibrillators as defined in section 71-51,102 to be trained for the delivery of practices and procedures in units of limited subject matter which will encourage continued development of abilities and use of such abilities through additional authorized practices and procedures;

(3) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created

pursuant to the Emergency Medical Services Practice Act, including provisions for issuing an emergency medical responder license to a licensee renewing his or her first responder license after September 1, 2010, and for issuing a paramedic license to a licensee renewing his or her emergency medical technician-paramedic license after September 1, 2010; and

(4) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency.

Source: Laws 2007, LB463, § 503; Laws 2009, LB195, § 15.

38-1221 License; requirements; term.

(1) To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with subdivision (1), (2), or (14) of section 38-1217.

(2) All licenses issued under the act other than temporary licenses shall expire the second year after issuance.

(3) An individual holding a certificate under the Emergency Medical Services Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Emergency Medical Services Practice Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with the Uniform Credentialing Act until the certificate would have expired under its terms.

Source: Laws 2007, LB463, § 505; Laws 2009, LB195, § 16.

38-1224 Duties and activities authorized; limitations.

(1) An out-of-hospital emergency care provider other than a first responder or an emergency medical responder as classified under section 38-1217 may not assume the duties incident to the title or practice the skills of an out-of-hospital emergency care provider unless he or she is employed by or serving as a volunteer member of an emergency medical service licensed by the department.

(2) An out-of-hospital emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act.

(3) An emergency medical technician-intermediate, an emergency medical technician-paramedic, an advanced emergency medical technician, or a paramedic may volunteer or be employed at a hospital as defined in section 71-419 or a health clinic as defined in section 71-416 to perform activities within his or her scope of practice within such hospital or health clinic under the supervision of a registered nurse, a physician assistant, or a physician. Such activities shall be performed in a manner established in rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508; Laws 2009, LB195, § 17.

38-1232 Individual liability.

(1) No out-of-hospital emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care

shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any out-of-hospital emergency care provider at the scene of an emergency, no out-of-hospital emergency care provider following such orders within the limits of his or her licensure, and no out-of-hospital emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (8) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516; Laws 2009, LB195, § 18.

ARTICLE 14

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

Section

- 38-1425. Deceased persons; funeral and disposition arrangements; liability.
38-1426. Final disposition; instructions; remains of deceased person;
disposition; liability.
38-1427. Autopsy; written authorization; removal of organs; when performed.

38-1425 Deceased persons; funeral and disposition arrangements; liability.

(1) Any person signing a funeral service agreement, a cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth in such agreement, form, or authorization, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of and the person's right of disposition. A funeral establishment, cemetery, or crematory authority shall have the right to rely on such agreement, form, or authorization and shall have the authority to carry out the instructions of the person or persons whom the funeral establishment, cemetery, or crematory authority reasonably believes holds the right of disposition. No funeral establishment, cemetery, or crematory authority shall have the responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent. If there is more than one person in a class equal in priority and the funeral establishment, cemetery, or crematory authority has no knowledge of any objection by other members of such class, the funeral establishment, cemetery, or crematory authority shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements so long as no other person in such class provides written notice of his or her objections to the funeral establishment, cemetery, or crematory authority, as the case may be.

(2) The liability for the reasonable cost of the final disposition of the remains of the decedent devolves jointly and severally upon all kin of the decedent in the same degree of kindred into which the right of disposition fell and upon the estate of the decedent and, in cases where a county board has the right to control disposition of the remains under subdivision (2)(j) of section 30-2223, upon the county in which the death occurred from funds available for such purpose.

(3) If the decedent died during active military service, as provided in 10 U.S.C. 1481 (a)(1) through (8), in any branch of the United States armed forces, United States reserve forces, or national guard, the person authorized by the decedent to direct disposition pursuant to section 564 of Public Law 109-163, as listed on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, shall take priority over all other persons described in section 30-2223.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36; R.S.1943, (2003), § 71-1339; Laws 2007, LB463, § 561; Laws 2013, LB420, § 1; Laws 2014, LB998, § 9.
Effective date April 10, 2014.

38-1426 Final disposition; instructions; remains of deceased person; disposition; liability.

(1) A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions as provided in sections 30-2223 and 38-1425. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the director, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the director under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

(2) If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

(3) This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

(4) A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the director shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37; R.S.1943, (2003), § 71-1340; Laws 2007, LB296, § 467; Laws 2007, LB463, § 562; Laws 2014, LB998, § 10.
Effective date April 10, 2014.

38-1427 Autopsy; written authorization; removal of organs; when performed.

A written authorization for an autopsy given by the person listed in section 30-2223 having the right of disposition of the remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 38-1426, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the director or to any other therapeutic service operated by any nonprofit agency approved by the director, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6; R.S.1943, (2003), § 71-1341; Laws 2007, LB296, § 468; Laws 2007, LB463, § 563; Laws 2014, LB998, § 11.
Effective date April 10, 2014.

ARTICLE 15**HEARING INSTRUMENT SPECIALISTS PRACTICE ACT**

Section

- 38-1501. Act, how cited.
- 38-1502. Definitions, where found.
- 38-1503. Board, defined.
- 38-1504. Hearing instrument, defined.
- 38-1505. Practice of fitting hearing instruments, defined.
- 38-1506. Sell, sale, or dispense, defined.
- 38-1507. Temporary license, defined.
- 38-1508. Board membership; qualifications.
- 38-1509. Sale or fitting of hearing instruments; license required.
- 38-1510. Applicability of act.
- 38-1511. Sale; conditions.
- 38-1512. License; examination; conditions.
- 38-1513. Temporary license; issuance; supervision; renewal.
- 38-1514. Qualifying examination; contents; purpose.
- 38-1515. Applicant for licensure; continuing competency requirements.
- 38-1516. Applicant for licensure; reciprocity; continuing competency requirements.
- 38-1517. Licensee; disciplinary action; additional grounds.
- 38-1518. Fees.

38-1501 Act, how cited.

Sections 38-1501 to 38-1518 shall be known and may be cited as the Hearing Instrument Specialists Practice Act.

Source: Laws 2007, LB463, § 565; Laws 2009, LB195, § 19.

38-1502 Definitions, where found.

For purposes of the Hearing Instrument Specialists Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1503 to 38-1507 apply.

Source: Laws 1969, c. 767, § 1, p. 2903; Laws 1986, LB 701, § 1; Laws 1987, LB 473, § 50; Laws 1988, LB 1100, § 148; Laws 1996, LB 1044, § 681; R.S.1943, (2003), § 71-4701; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566; Laws 2009, LB195, § 20.

38-1503 Board, defined.

Board means the Board of Hearing Instrument Specialists.

Source: Laws 2007, LB463, § 567; Laws 2009, LB195, § 21.

38-1504 Hearing instrument, defined.

Hearing instrument means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

Source: Laws 2007, LB463, § 568; Laws 2009, LB195, § 22.

38-1505 Practice of fitting hearing instruments, defined.

Practice of fitting hearing instruments means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

Source: Laws 2007, LB463, § 569; Laws 2009, LB195, § 23.

38-1506 Sell, sale, or dispense, defined.

Sell, sale, or dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (1) wholesale transactions with distributors or dispensers and (2) distribution of hearing instruments by nonprofit service organizations at no cost to the recipient for the hearing instrument.

Source: Laws 2007, LB463, § 570; Laws 2009, LB195, § 24.

38-1507 Temporary license, defined.

Temporary license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

Source: Laws 2007, LB463, § 571; Laws 2009, LB195, § 25.

38-1508 Board membership; qualifications.

The board shall consist of five professional members and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. The professional members shall consist of three licensed hearing instrument specialists, one otolaryngologist, and one audiologist until one licensed hearing instrument specialist vacates his or her

office or his or her term expires, whichever occurs first, at which time the professional members of the board shall consist of three licensed hearing instrument specialists, at least one of whom does not hold a license as an audiologist, one otolaryngologist, and one audiologist. At the expiration of the four-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1969, c. 767, § 15, p. 2914; Laws 1981, LB 204, § 130; Laws 1986, LB 701, § 12; Laws 1988, LB 1100, § 160; Laws 1992, LB 1019, § 81; Laws 1993, LB 375, § 6; Laws 1994, LB 1223, § 52; Laws 1999, LB 828, § 173; R.S.1943, (2003), § 71-4715; Laws 2007, LB463, § 572; Laws 2009, LB195, § 26.

38-1509 Sale or fitting of hearing instruments; license required.

(1) No person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice shall also be licensed as a hearing instrument specialist pursuant to subsection (4) of section 38-1512.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27.

38-1510 Applicability of act.

(1) The Hearing Instrument Specialists Practice Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if such person or organization employing such person does not sell hearing instruments or the accessories thereto.

(2) The act shall not apply to a person who is a physician licensed to practice in this state, except that such physician shall not delegate the authority to fit

and dispense hearing instruments unless the person to whom the authority is delegated is licensed as a hearing instrument specialist under the act.

Source: Laws 1969, c. 767, § 4, p. 2905; Laws 1986, LB 701, § 4; Laws 1988, LB 1100, § 150; R.S.1943, (2003), § 71-4704; Laws 2007, LB463, § 574; Laws 2009, LB195, § 28.

38-1511 Sale; conditions.

(1) Any person who practices the fitting and sale of hearing instruments shall deliver to each person supplied with a hearing instrument a receipt which shall contain the licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing instrument furnished, and clearly stating the full terms of sale. If a hearing instrument which is not new is sold, the receipt and the container thereof shall be clearly marked as used or reconditioned, whichever is applicable, with terms of guarantee, if any.

(2) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his or her relationship with the hearing instrument specialist that any examination or representation made by a licensed hearing instrument specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.

Source: Laws 1969, c. 767, § 3, p. 2905; Laws 1986, LB 701, § 3; R.S.1943, (2003), § 71-4703; Laws 2007, LB463, § 575; Laws 2009, LB195, § 29.

38-1512 License; examination; conditions.

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

- (a) Is at least twenty-one years of age; and
- (b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

(4) The department shall issue a hearing instrument specialist license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice upon application to the

department, proof of licensure as an audiologist, and payment of a twenty-five-dollar fee.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30.

38-1513 Temporary license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary license.

(2) Any person who desires a temporary license shall make application to the department. The temporary license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary license, the temporary license may be renewed or reissued for a twelve-month period. In no case may a temporary license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31.

38-1514 Qualifying examination; contents; purpose.

The qualifying examination provided in section 38-1512 shall be designed to demonstrate the applicant's adequate technical qualifications by:

(1) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing instruments:

- (a) Basic physics of sound;
- (b) The anatomy and physiology of the ear; and
- (c) The function of hearing instruments; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:

- (a) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (b) Live voice or recorded voice speech audiometry;
- (c) Masking when indicated;
- (d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing instrument; and

(e) Taking earmold impressions.

Source: Laws 1969, c. 767, § 9, p. 2908; Laws 1986, LB 701, § 8; R.S.1943, (2003), § 71-4709; Laws 2007, LB463, § 578; Laws 2009, LB195, § 32.

38-1515 Applicant for licensure; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the education and examination requirements in section 38-1512, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 579; Laws 2009, LB195, § 33.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 580; Laws 2009, LB195, § 34.

38-1517 Licensee; disciplinary action; additional grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Hearing Instrument Specialists Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

(1) Fitting and selling a hearing instrument to a child under the age of sixteen who has not been examined and cleared for hearing instrument use within a six-month period by an otolaryngologist without a signed waiver by the legal guardian. This subdivision shall not apply to the replacement with an identical model of any hearing instrument within one year of its purchase;

(2) Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission or the Food and Drug Administration; or

(3) Violation of any provision of the Hearing Instrument Specialists Practice Act.

Source: Laws 1969, c. 767, § 12, p. 2909; Laws 1986, LB 701, § 10; Laws 1988, LB 1100, § 157; Laws 1991, LB 456, § 37; Laws 1994, LB 1223, § 51; R.S.1943, (2003), § 71-4712; Laws 2007, LB463, § 581; Laws 2009, LB195, § 35.

38-1518 Fees.

The department shall establish and collect fees for credentialing activities under the Hearing Instrument Specialists Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1988, LB 1100, § 159; Laws 1992, LB 1019, § 80; Laws 2003, LB 242, § 127; R.S.1943, (2003), § 71-4714.01; Laws 2007, LB463, § 582; Laws 2009, LB195, § 36.

ARTICLE 19

MEDICAL RADIOGRAPHY PRACTICE ACT

Section

- 38-1901. Act, how cited.
- 38-1902. Definitions, where found.
- 38-1908. Medical radiography, defined.
- 38-1908.02. Patient care and management; defined.
- 38-1918. Educational programs; testing; requirements.

38-1901 Act, how cited.

Sections 38-1901 to 38-1920 shall be known and may be cited as the Medical Radiography Practice Act.

Source: Laws 2007, LB463, § 639; Laws 2008, LB928, § 5; Laws 2010, LB849, § 1.

38-1902 Definitions, where found.

For purposes of the Medical Radiography Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1903 to 38-1913 apply.

Source: Laws 2007, LB463, § 640; Laws 2008, LB928, § 6; Laws 2010, LB849, § 2.

38-1908 Medical radiography, defined.

Medical radiography means the application of radiation to humans for diagnostic purposes, including, but not limited to, utilizing proper:

- (1) Radiation protection for the patient, the radiographer, and others;
- (2) Radiation generating equipment operation and quality control;
- (3) Image production and evaluation;
- (4) Radiographic procedures;
- (5) Processing of films;
- (6) Positioning of patients;
- (7) Performance methods to achieve optimum radiographic technique with a minimum of radiation exposure; and
- (8) Patient care and management as it relates to the practice of medical radiography.

Source: Laws 2007, LB463, § 646; Laws 2010, LB849, § 3.

38-1908.02 Patient care and management; defined.

Patient care and management, as it relates to the practice of medical radiography, includes, but is not limited to:

- (1) Infection control;
- (2) Patient transfer and movement;
- (3) Assisting patients with medical equipment;
- (4) Routine monitoring;
- (5) Medical emergencies;
- (6) Proper use of contrast media; and
- (7) Patient safety and protection, including minimizing and monitoring patient radiation exposure through utilizing proper professional standards and protocols, including the principle of as low as reasonably achievable.

Source: Laws 2010, LB849, § 4.

38-1918 Educational programs; testing; requirements.

(1)(a) The educational program for medical radiographers shall consist of twenty-four months of instruction in radiography approved by the board which includes, but is not limited to:

- (i) Radiation protection for the patient, the radiographer, and others;
- (ii) Radiation generating equipment operation and quality control;
- (iii) Image production and evaluation;
- (iv) Radiographic procedures;
- (v) Processing of films;
- (vi) Positioning of patients;
- (vii) Performance methods to achieve optimum radiographic technique with a minimum of radiation exposure; and
- (viii) Patient care and management as it relates to the practice of medical radiography.

(b) The board shall recognize equivalent courses of instruction successfully completed by individuals who are applying for licensure as medical radiographers when determining if the requirements of section 38-1915 have been met.

(2) The examination for limited radiographers shall include, but not be limited to:

(a) Radiation protection, radiation generating equipment operation and quality control, image production and evaluation, radiographic procedures, and patient care and management; and

(b) The anatomy of, and positioning for, specific regions of the human anatomy. The anatomical regions shall include at least one of the following:

- (i) Chest;
- (ii) Extremities;
- (iii) Skull and sinus;
- (iv) Spine; or
- (v) Ankle and foot.

(3) The examination for limited radiographers in bone density shall include, but not be limited to, basic concepts of bone densitometry, equipment operation and quality control, radiation safety, and dual X-ray absorptiometry (DXA) scanning of the finger, heel, forearm, lumbar spine, and proximal femur.

(4) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations regarding the examinations required in sections 38-1915 and 38-1916. Such rules and regulations shall provide for (a) the administration of examinations based upon national standards, such as the Examination in Radiography from the American Registry of Radiologic Technologists for medical radiographers, the Examination for the Limited Scope of Practice in Radiography or the Bone Densitometry Equipment Operator Examination from the American Registry of Radiologic Technologists for limited radiographers, or equivalent examinations that, as determined by the board, meet the standards for educational and psychological testing as recommended by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, (b) procedures to be followed for examinations, (c) the method of grading and the passing grades for such examinations, (d) security protection for questions and answers, and (e) for medical radiographers, the contents of such examination based on the course requirements for medical radiographers prescribed in subsection (1) of this section. Any costs incurred in determining the extent to which examinations meet the examining standards of this subsection shall be paid by the individual or organization proposing the use of such examination.

(5) No applicant for a license as a limited radiographer may take the examination for licensure, or for licensure for any specific anatomical region, more than three times without first waiting a period of one year after the last unsuccessful attempt of the examination and submitting proof to the department of completion of continuing competency activities as required by the board for each subsequent attempt.

Source: Laws 1987, LB 390, § 24; Laws 1990, LB 1064, § 21; Laws 1995, LB 406, § 47; Laws 1996, LB 1044, § 656; Laws 2000, LB 1115, § 74; Laws 2002, LB 1021, § 76; Laws 2003, LB 242, § 115; Laws 2006, LB 994, § 105; R.S.Supp.,2006, § 71-3515.02; Laws 2007, LB463, § 656; Laws 2010, LB849, § 5.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

| | |
|-------------|---|
| Section | |
| 38-2001. | Act, how cited. |
| 38-2008. | Approved program, defined. |
| 38-2009. | Repealed. Laws 2009, LB 195, § 111. |
| 38-2014. | Physician assistant, defined. |
| 38-2015. | Proficiency examination, defined. |
| 38-2017. | Supervising physician, defined. |
| 38-2018. | Supervision, defined. |
| 38-2021. | Unprofessional conduct, defined. |
| 38-2026. | Medicine and surgery; license; qualifications; foreign medical graduates; requirements. |
| 38-2026.01. | Reentry license; issuance; qualifications; department; powers; supervision; conversion of license; period valid; renewal. |
| 38-2037. | Additional grounds for disciplinary action. |
| 38-2047. | Physician assistants; services performed; supervision requirements. |
| 38-2049. | Physician assistants; licenses; temporary licenses; issuance. |
| 38-2050. | Physician assistants; supervision; supervising physician; requirements; agreement. |
| 38-2051. | Repealed. Laws 2009, LB 195, § 111. |
| 38-2055. | Physician assistants; prescribe drugs and devices; restrictions. |
| 38-2062. | Anatomic pathology service; unprofessional conduct. |

38-2001 Act, how cited.

Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which is approved by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37.

38-2009 Repealed. Laws 2009, LB 195, § 111.**38-2014 Physician assistant, defined.**

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and whom the department, with the recommendation of the board, approves to perform medical services under the supervision of a physician.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38.

38-2015 Proficiency examination, defined.

Proficiency examination means the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.

Source: Laws 2007, LB463, § 673; Laws 2009, LB195, § 39.

38-2017 Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication shall be sufficient to show ready availability.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41.

38-2021 Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the requirements of sections 71-6901 to 71-6911;

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (7) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1.

Cross References

Pain-Capable Unborn Child Protection Act, see section 28-3,102.

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Except as otherwise provided in sections 38-2026.01 and 38-2027, each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission on Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least three years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684; Laws 2011, LB406, § 2.

38-2026.01 Reentry license; issuance; qualifications; department; powers; supervision; conversion of license; period valid; renewal.

(1) The department, with the recommendation of the board, may issue a reentry license to a physician who has not actively practiced medicine for the two-year period immediately preceding the filing of an application for a reentry license or who has not otherwise maintained continued competency during such period as determined by the board.

(2) To qualify for a reentry license, the physician shall meet the same requirements for licensure as a regular licensee and submit to evaluations, assessments, and an educational program as required by the board.

(3) If the board conducts an assessment and determines that the applicant requires a period of supervised practice, the department, with the recommendation of the board, may issue a reentry license allowing the applicant to practice medicine under supervision as specified by the board. After satisfactory completion of the period of supervised practice as determined by the board, the reentry licensee may apply to the department to convert the reentry license to a license issued under section 38-2026.

(4) After an assessment and the completion of any educational program that has been prescribed, if the board determines that the applicant is competent and qualified to practice medicine without supervision, the department, with the recommendation of the board, may convert the reentry license to a license issued under section 38-2026.

(5) A reentry license shall be valid for one year and may be renewed for up to two additional years if approved by the department, with the recommendation of the board.

(6) The issuance of a reentry license shall not constitute a disciplinary action.

Source: Laws 2011, LB406, § 3.

38-2037 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice medicine and surgery or osteopathic medicine and surgery or a license to practice as a physician assistant may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

Source: Laws 2007, LB463, § 695; Laws 2009, LB195, § 42.

38-2047 Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician, (b) are appropriate to the level of competence of the physician assistant, (c) form a component of the supervising physician's scope of practice, and (d) are not otherwise prohibited by law.

(2) A physician assistant shall be considered an agent of his or her supervising physician in the performance of practice-related activities delegated by the supervising physician, including, but not limited to, ordering diagnostic, therapeutic, and other medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of competence of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant, are delegated by his or her supervising physician, and are not otherwise prohibited by law.

(5) In order for a physician assistant to practice in a hospital, (a) his or her supervising physician shall be a member of the medical staff of the hospital, (b) the physician assistant shall be approved by the governing board of the hospital, and (c) the physician assistant shall comply with applicable hospital policies, including, but not limited to, reasonable requirements that the physician assistant and the supervising physician maintain professional liability insurance with such coverage and limits as established by the governing board of the hospital.

(6) For physician assistants with less than two years of experience, the department, with the recommendation of the board, shall adopt and promulgate rules and regulations establishing minimum requirements for the personal presence of the supervising physician, stated in hours or percentage of practice time, and may provide different minimum requirements for the personal presence of the supervising physician based on the geographic location of the supervising physician's primary and other practice sites and other factors the board deems relevant.

(7) A physician assistant may render services in a setting geographically remote from the supervising physician, except that a physician assistant with less than two years of experience shall comply with standards of supervision

established in rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. The board may consider an application for waiver of the standards and may waive the standards upon a showing of good cause by the supervising physician. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43.

Cross References

Liability limitations:

Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
Rendering emergency aid, see section 25-21,186.

38-2049 Physician assistants; licenses; temporary licenses; issuance.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44.

38-2050 Physician assistants; supervision; supervising physician; requirements; agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise a physician assistant; and

(c) Maintain an agreement with the physician assistant as provided in subsection (2) of this section.

(2)(a) An agreement between a supervising physician and a physician assistant shall (i) provide that the supervising physician will exercise supervision over the physician assistant in accordance with the Medicine and Surgery Practice Act and the rules and regulations adopted and promulgated under the act relating to such agreements, (ii) define the scope of practice of the physician assistant, (iii) provide that the supervising physician will retain professional and legal responsibility for medical services rendered by the physician assistant pursuant to such agreement, and (iv) be signed by the supervising physician and the physician assistant.

(b) The supervising physician shall keep the agreement on file at his or her primary practice site, shall keep a copy of the agreement on file at each practice site where the physician assistant provides medical services, and shall make the agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45.

38-2051 Repealed. Laws 2009, LB 195, § 111.

38-2055 Physician assistants; prescribe drugs and devices; restrictions.

A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician. Any limitation placed by the supervising physician on the prescribing authority of the physician assistant shall be recorded on the physician assistant’s scope of practice agreement established pursuant to rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. All prescriptions and prescription container labels shall bear the name of the physician assistant and, if required for purposes of reimbursement, the name of the supervising physician. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46.

Cross References

Schedules of controlled substances, see section 28-405.

38-2062 Anatomic pathology service; unprofessional conduct.

(1) It shall be unprofessional conduct for any physician who orders but does not supervise or perform a component of an anatomic pathology service to fail to disclose in any bill for such service presented to a patient, entity, or person:

(a) The name and address of the physician or laboratory that provided the anatomic service; and

(b) The actual amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory that performed the service.

(2) For purposes of this section, anatomic pathology service means:

(a) Blood-banking services performed by pathologists;

(b) Cytopathology, which means the microscopic examination of cells from the following: Fluids; aspirates; washings; brushings; or smears, including the Pap test examination performed by a physician or under the supervision of a physician;

(c) Hematology, which means the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by the pathologist;

(d) Histopathology or surgical pathology, which means the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician; and

(e) Subcellular pathology and molecular pathology.

(3) For purposes of this section, anatomic pathology service does not include the initial collection or packaging of the specimen for transport.

Source: Laws 2009, LB394, § 2.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Section

38-2121. License; required; exceptions.

38-2133. Marriage and family therapist; certification; qualifications.

38-2121 License; required; exceptions.

The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services prior to July 1, 2013, or by the Nebraska Commission on Problem Gambling beginning on July 1, 2013, from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739; Laws 2013, LB6, § 11.

38-2133 Marriage and family therapist; certification; qualifications.

(1) A person who applies to the department for certification as a marriage and family therapist shall be qualified for such certification if he or she:

(a) Provides evidence to the department that he or she has a master’s or doctoral degree in marriage and family therapy from a program approved by the board or a graduate degree in a field determined by the board to be related to marriage and family therapy and graduate-level course work determined by the board to be equivalent to a master’s degree in marriage and family therapy;

(b) Provides evidence to the department that he or she has had at least three thousand hours of experience in marriage and family therapy under a qualified supervisor following receipt of the graduate degree. The three thousand hours shall include at least one thousand five hundred hours of direct-client contact during the five years preceding application for certification. During the course of completing the client-contact hours, there shall be at least one hundred hours of supervisor-supervisee contact hours with a qualified supervisor and supervision shall be provided at least one hour per week or two hours every two weeks; and

(c) Completes an application and passes an examination approved by the board.

(2) For purposes of this section:

(a) Actively engaged in the practice of marriage and family therapy may include (i) services and activities provided under the direct supervision of a person with at least a master's degree in marriage and family therapy from a program approved by the board or (ii) services and activities that are classified by title or by description of duties and responsibilities as marriage and family therapy practice;

(b) Qualified supervisor means (i) a licensed mental health practitioner, a psychologist licensed to engage in the practice of psychology, or a licensed physician who holds a designation of approved supervisor from an association which establishes standards for marriage and family therapy in conformity with accepted industry standards; such standards shall be specified in rules and regulations approved by the board and adopted and promulgated by the department or (ii) a marriage and family therapist who has practiced for five years and has completed a five-hour supervision course that may be provided by an association which establishes standards for marriage and family therapy in conformity with accepted industry standards; such standards shall be specified in rules and regulations approved by the board and adopted and promulgated by the department; and

(c) Supervision means face-to-face contact between an applicant and a qualified supervisor during which the applicant appraises the supervisor of the diagnosis and treatment of each client, the clients' cases are discussed, the supervisor provides the applicant with oversight and guidance in treating and dealing with clients, and the supervisor evaluates the applicant's performance. In order for a supervised period of time to be credited toward the time of supervision required by subsection (1) of this section, it shall consist of the following:

(i) Focus on raw data from the applicant's clinical work which is made directly available to the supervisor through such means as written clinical materials, direct observation, and video and audio recordings;

(ii) A process which is distinguishable from personal psychotherapy or didactic instruction; and

(iii) A proportion of individual and group supervision as determined by the rules and regulations of the board.

Source: Laws 1993, LB 669, § 48; Laws 1994, LB 1210, § 107; Laws 1997, LB 752, § 163; Laws 2000, LB 1135, § 15; Laws 2003, LB 242, § 78; R.S.1943, (2003), § 71-1,329; Laws 2007, LB463, § 750; Laws 2012, LB1148, § 1.

ARTICLE 22

NURSE PRACTICE ACT

Section

38-2218. Nursing; practices permitted.

38-2218 Nursing; practices permitted.

The Nurse Practice Act confers no authority to practice medicine or surgery. The Nurse Practice Act does not prohibit:

(1) Home care provided by parents, foster parents, family, or friends if such person does not represent or hold himself or herself out to be a nurse or use any designation in connection with his or her name which tends to imply that he or she is licensed to practice under the act;

(2) Home care provided for compensation or gratuitously by a parent, foster parent, family member, or friend if such person is a licensed nurse and represents or holds himself or herself out to be a nurse and uses any designation in connection with his or her name which tends to imply that he or she is licensed to practice under the act;

(3) Christian Science nursing consistent with the theology of Christian Science provided by a Christian Science nurse who does not hold himself or herself out as a registered nurse or a licensed practical nurse;

(4) Auxiliary patient care services provided by persons carrying out duties under the direction of a licensed practitioner;

(5) Auxiliary patient care services provided by persons carrying out interventions for the support of nursing service as delegated by a registered nurse or as assigned and directed by a licensed practical nurse licensed under the act;

(6) The gratuitous rendering of assistance by anyone in the case of an emergency;

(7) Nursing by any legally licensed nurse of any other state whose engagement requires him or her to (a) accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, (b) transport patients into, out of, or through this state provided each transport does not exceed twenty-four hours, (c) provide patient care during periods of transition following transport, (d) provide educational programs or consultative services within this state for a period not to exceed fourteen consecutive days if neither the education nor the consultation includes the provision or the direction of patient care, and (e) provide nursing care in the case of a disaster. These exceptions do not permit a person to represent or hold himself or herself out as a nurse licensed to practice in this state;

(8) Nursing services rendered by a student enrolled in an approved program of nursing when the services are a part of the student's course of study;

(9) The practice of nursing by any legally licensed nurse of another state who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if the practice is limited to that service or employment; or

(10) The practice of nursing, if permitted by federal law, as a citizen of a foreign country temporarily residing in Nebraska for a period not to exceed one year for the purpose of postgraduate study, certified to be such by an appropriate agency satisfactory to the board.

Source: Laws 1953, c. 245, § 3, p. 836; Laws 1955, c. 272, § 2, p. 854; Laws 1975, LB 422, § 3; Laws 1989, LB 342, § 20; Laws 1991, LB 703, § 18; Laws 1995, LB 563, § 8; Laws 1996, LB 1155, § 24; Laws 2002, LB 1062, § 20; R.S.1943, (2003), § 71-1,132.06; Laws 2007, LB463, § 774; Laws 2012, LB1083, § 1.

ARTICLE 23

NURSE PRACTITIONER PRACTICE ACT

Section

38-2301. Act, how cited.

38-2315. Nurse practitioner; functions; scope.

38-2324. Nurse practitioner; signing of death certificates; grounds for disciplinary action.

38-2301 Act, how cited.

Sections 38-2301 to 38-2324 shall be known and may be cited as the Nurse Practitioner Practice Act.

Source: Laws 1981, LB 379, § 1; Laws 1984, LB 724, § 2; Laws 1996, LB 414, § 11; Laws 2000, LB 1115, § 26; Laws 2005, LB 256, § 47; R.S.Supp.,2006, § 71-1704; Laws 2007, LB463, § 793; Laws 2012, LB1042, § 1.

38-2315 Nurse practitioner; functions; scope.

(1) A nurse practitioner may provide health care services within specialty areas. A nurse practitioner shall function by establishing collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of a nurse practitioner shall be referred to an appropriate health care provider.

(2) Nurse practitioner practice means health promotion, health supervision, illness prevention and diagnosis, treatment, and management of common health problems and acute and chronic conditions, including:

(a) Assessing patients, ordering diagnostic tests and therapeutic treatments, synthesizing and analyzing data, and applying advanced nursing principles;

(b) Dispensing, incident to practice only, sample medications which are provided by the manufacturer and are provided at no charge to the patient; and

(c) Prescribing therapeutic measures and medications relating to health conditions within the scope of practice. Any limitation on the prescribing authority of the nurse practitioner for controlled substances listed in Schedule II of section 28-405 shall be recorded in the integrated practice agreement established pursuant to section 38-2310.

(3) A nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty may manage the care of patients committed under the Nebraska Mental Health Commitment Act. Patients who require care beyond the scope of practice of a nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty shall be referred to an appropriate health care provider.

(4) A nurse practitioner may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the nurse practitioner and are not otherwise prohibited by law.

Source: Laws 1981, LB 379, § 18; Laws 1984, LB 724, § 14; Laws 1996, LB 414, § 25; Laws 2000, LB 1115, § 44; Laws 2005, LB 256, § 57; Laws 2006, LB 994, § 96; R.S.Supp.,2006, § 71-1721; Laws 2007, LB463, § 807; Laws 2012, LB1042, § 2; Laws 2013, LB243, § 1.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

38-2324 Nurse practitioner; signing of death certificates; grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice as a nurse practitioner may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01 and 71-605 relating to the signing of death certificates.

Source: Laws 2012, LB1042, § 3.

ARTICLE 24

NURSING HOME ADMINISTRATOR PRACTICE ACT

Section

- 38-2401. Act, how cited.
- 38-2402. Definitions, where found.
- 38-2404. Administrator or nursing home administrator, defined.
- 38-2410.01. Facility operated primarily for caring for persons with head injuries and associated disorders, defined.
- 38-2418. Licensed administrator; when required; provisional license.
- 38-2419. Nursing home administrator; license; issuance; qualifications; duties.
- 38-2420. Administrator-in-training program; mentoring program; certified preceptor; requirements.
- 38-2426. Administrator of facility operated primarily for caring for persons with head injuries and associated disorders; license required; qualifications; renewal.

38-2401 Act, how cited.

Sections 38-2401 to 38-2426 shall be known and may be cited as the Nursing Home Administrator Practice Act.

Source: Laws 2007, LB463, § 816; Laws 2013, LB42, § 1.

38-2402 Definitions, where found.

For purposes of the Nursing Home Administrator Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2403 to 38-2416 apply.

Source: Laws 2007, LB463, § 817; Laws 2013, LB42, § 2.

38-2404 Administrator or nursing home administrator, defined.

Administrator or nursing home administrator means any individual who meets the education and training requirements of section 38-2419 and is responsible for planning, organizing, directing, and controlling the operation of a nursing home or an integrated system or who in fact performs such functions, whether or not such functions are shared by one or more other persons. Notwithstanding this section or any other provision of law, the administrator of an intermediate care facility for persons with developmental disabilities may be either a licensed nursing home administrator or a qualified developmental disabilities professional.

Source: Laws 2007, LB463, § 819; Laws 2013, LB23, § 7.

38-2410.01 Facility operated primarily for caring for persons with head injuries and associated disorders, defined.

Facility operated primarily for caring for persons with head injuries and associated disorders means a nursing home in which all or a majority of the persons served by the nursing home have head injuries and associated disorders.

Source: Laws 2013, LB42, § 3.

38-2418 Licensed administrator; when required; provisional license.

Each nursing home within the state shall be operated under the supervision of an administrator duly licensed in the manner provided in the Nursing Home Administrator Practice Act. Each facility within the state operated primarily for caring for persons with head injuries and associated disorders shall be operated under the supervision of an administrator duly licensed in the manner provided in the Nursing Home Administrator Practice Act. If there is a vacancy in the position of licensed administrator of a nursing home, the owner, governing body, or other appropriate authority of the nursing home may select a person to apply for a provisional license in nursing home administration to serve as the administrator of such facility.

Source: Laws 1972, LB 1040, § 8; Laws 1980, LB 686, § 5; Laws 1988, LB 693, § 12; R.S.Supp., 1988, § 71-2045.04; R.S.1943, (2003), § 71-6062; Laws 2007, LB463, § 833; Laws 2013, LB42, § 4.

38-2419 Nursing home administrator; license; issuance; qualifications; duties.

(1) The department shall issue a license to an applicant who submits (a) satisfactory evidence of completion of (i) an associate degree which includes the core educational requirements and an administrator-in-training program under a certified preceptor, (ii) a degree or an advanced degree and a mentoring program under a certified preceptor, (iii) a nursing degree, previous work experience in health care administration, and a mentoring program under a certified preceptor, (iv) a degree or an advanced degree in health care and previous work experience in health care administration, or (v) an associate degree which includes the core educational requirements, previous work experience, and a mentoring program under a certified preceptor, and (b) evidence of successful passage of the National Association of Boards of Examiners for Nursing Home Administration written examination.

(2) The department shall license administrators in accordance with the Nursing Home Administrator Practice Act and standards, rules, and regulations adopted and promulgated by the department, with the recommendation of the board. The license shall not be transferable or assignable.

(3) Each administrator shall be responsible for and oversee the operation of only one licensed facility or one integrated system, except that an administrator may make application to the department for approval to be responsible for and oversee the operations of a maximum of three licensed facilities if such facilities are located within two hours' travel time of each other or to act in the dual role of administrator and department head but not in the dual role of administrator and director of nursing. In reviewing the application, the department may consider the proximity of the facilities and the number of licensed beds in each facility. An administrator responsible for and overseeing the operations of any

integrated system is subject to disciplinary action against his or her license for any regulatory violations within each system.

Source: Laws 1972, LB 1040, § 6; Laws 1980, LB 686, § 4; Laws 1988, LB 352, § 126; R.S.1943, (1986), § 71-2045.02; Laws 1988, LB 693, § 3; Laws 1989, LB 344, § 19; Laws 1989, LB 733, § 1; R.S.Supp.,1989, § 71-2041.02; Laws 1991, LB 58, § 1; Laws 1991, LB 456, § 38; Laws 1992, LB 1019, § 83; Laws 1993, LB 669, § 59; Laws 1994, LB 1223, § 74; Laws 1997, LB 608, § 23; Laws 1997, LB 752, § 193; Laws 1999, LB 411, § 2; Laws 2002, LB 1021, § 92; Laws 2002, LB 1062, § 56; Laws 2003, LB 242, § 133; Laws 2005, LB 246, § 2; R.S.Supp.,2006, § 71-6054; Laws 2007, LB463, § 834; Laws 2013, LB42, § 5.

38-2420 Administrator-in-training program; mentoring program; certified preceptor; requirements.

(1) Except as provided in subdivision (1)(a)(iv) of section 38-2419 and section 38-2426, in order for a person to become licensed as a nursing home administrator, he or she shall complete an administrator-in-training program or a mentoring program. The administrator-in-training program shall occur in a nursing home under the direct supervision of a certified preceptor, and it may be gained as an internship which is part of an approved associate degree. A mentoring program shall occur in a nursing home under the supervision of a certified preceptor. The certified preceptor in a mentoring program need not be at such facility during the period of such supervision but shall be available to assist with questions or problems as needed. A mentoring program may be gained as an internship which is part of a degree or advanced degree. A person in a mentoring program may apply for a provisional license as provided in section 38-2423.

(2) An applicant may begin his or her administrator-in-training or mentoring program upon application to the department with the required fee, evidence that he or she has completed at least fifty percent of the core educational requirements, and evidence of an agreement between the certified preceptor and the applicant for at least six hundred forty hours of training and experience, to be gained in not less than four months. Such training shall occur in a Nebraska-licensed nursing home under a certified preceptor.

(3) The certified preceptor shall submit a report to the department by the fifth day of each month for the duration of the administrator-in-training or mentoring program, describing the nature and extent of training completed to date. At the conclusion of the program, the certified preceptor shall report to the department whether the applicant has successfully completed the board's approved course for such program. With the concurrence of the certified preceptor, the applicant may remain in such program until successfully completed or may reapply to enter another administrator-in-training or mentoring program.

(4)(a) The administrator-in-training or mentoring program shall occur under the supervision of a certified preceptor. An applicant to become a certified preceptor shall (i) be currently licensed as a nursing home administrator in the State of Nebraska, (ii) have three years of experience as a nursing home administrator in the five years immediately preceding certification, and (iii) complete a preceptor training course approved by the board.

(b) All preceptor certificates shall expire on December 31 of every fourth year beginning December 31, 2000. Before acting on an application for renewal, the board shall review the performance of the applicant. Such review may include consideration of survey and complaint information, student evaluations, and any other related information deemed relevant by the board. The board may deny an application for renewal upon a finding that the applicant's performance has been unsatisfactory based on such review.

Source: Laws 1988, LB 693, § 4; Laws 1989, LB 733, § 2; R.S.Supp.,1989, § 71-2041.03; Laws 1991, LB 455, § 1; Laws 1992, LB 1019, § 84; Laws 1999, LB 411, § 3; Laws 2003, LB 242, § 134; R.S.1943, (2003), § 71-6055; Laws 2007, LB463, § 835; Laws 2013, LB42, § 6.

38-2426 Administrator of facility operated primarily for caring for persons with head injuries and associated disorders; license required; qualifications; renewal.

(1) In order to qualify to function as the administrator of a facility operated primarily for caring for persons with head injuries and associated disorders, an individual shall be licensed as a nursing home administrator if he or she meets the requirements of this section. A license issued under this section permits the holder to serve as a nursing home administrator only in a facility operated primarily for caring for persons with head injuries and associated disorders.

(2) To receive a credential to practice nursing home administration for a facility operated primarily for caring for persons with head injuries and associated disorders, an individual shall:

(a) Have at least four years of experience working with persons with head injuries or severe physical disabilities, at least two of which were spent in an administrative capacity; and

(b) Either:

(i) Hold a credential as:

(A) A psychologist pursuant to the Uniform Credentialing Act, with at least a master's degree in psychology from an accredited college or university;

(B) A physician licensed pursuant to the Uniform Credentialing Act to practice medicine and surgery or psychiatry;

(C) An educator with at least a master's degree in education from an accredited college or university;

(D) A certified social worker, a certified master social worker, or a licensed mental health practitioner pursuant to the Uniform Credentialing Act;

(E) A physical therapist, an occupational therapist, or a speech-language pathologist pursuant to the Uniform Credentialing Act; or

(F) An administrator or executive of a health care facility as defined in section 71-413 who is a member in good standing with an organization that offers voluntary certification for the purpose of demonstrating managerial knowledge and experience for health care managers; or

(ii) Have at least eight years of experience working with persons with head injuries or severe physical disabilities, at least five of which were spent in an administrative capacity in a facility operated primarily for caring for persons with head injuries or severe physical disabilities.

(3) A license issued pursuant to this section shall be issued without examination and without the requirement of completion of an administrator-in-training or mentoring program. Such license may be renewed without the completion of any continuing competency requirements.

Source: Laws 2013, LB42, § 7.

ARTICLE 26 OPTOMETRY PRACTICE ACT

Section

- 38-2604. Pharmaceutical agents, defined.
- 38-2605. Practice of optometry, defined.
- 38-2614. Optometrist; therapeutic pharmaceutical agents; certification of courses of instruction; board approval.
- 38-2617. Use of pharmaceutical agents or dispensing of contact lens containing ocular pharmaceutical agent by licensed optometrist; standard of care.
- 38-2620. Nebraska Optometry Education Assistance Contract Program; purpose.
- 38-2622. Program; financial assistance; number of students.

38-2604 Pharmaceutical agents, defined.

(1) Pharmaceutical agents, for diagnostic purposes, means anesthetics, cycloplegics, and mydriatics.

(2) Pharmaceutical agents, for therapeutic purposes, means topical ophthalmic pharmaceutical agents which treat eye diseases, infection, inflammation, and superficial abrasions, or oral analgesics, including oral analgesics enumerated in Schedules III and IV of section 28-405 necessary to treat conditions of the eye, ocular adnexa, or visual system, or oral pharmaceutical agents for the treatment of diseases or infections of the eye, ocular adnexa, or visual system, or oral anti-inflammatory agents to treat conditions of the eye, ocular adnexa, or visual system.

(3) Pharmaceutical agents, for therapeutic purposes, includes an epinephrine autoinjector for treatment of anaphylaxis and an oral steroid, oral glaucoma agent, or oral immunosuppressive agent.

Source: Laws 1979, LB 9, § 4; Laws 1986, LB 131, § 2; Laws 1993, LB 429, § 4; Laws 1998, LB 369, § 4; R.S.1943, (2003), § 71-1,135.01; Laws 2007, LB463, § 876; Laws 2014, LB526, § 1. Effective date July 18, 2014.

38-2605 Practice of optometry, defined.

(1) The practice of optometry means one or a combination of the following:

(a) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(b) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(c) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(d) The dispensing and sale of a contact lens, including a cosmetic or plano contact lens or a contact lens containing an ocular pharmaceutical agent which an optometrist is authorized by law to prescribe and which is classified by the federal Food and Drug Administration as a drug;

(e) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(f) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

(2) The practice of optometry does not include the use of surgery, the use of laser surgery, or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Source: Laws 1927, c. 167, § 111, p. 487; C.S.1929, § 71-1601; R.S.1943, § 71-1,133; Laws 1979, LB 9, § 1; Laws 1986, LB 131, § 1; Laws 1987, LB 116, § 1; Laws 1993, LB 429, § 2; Laws 1998, LB 369, § 1; R.S.1943, (2003), § 71-1,133; Laws 2007, LB236, § 20; Laws 2007, LB463, § 877; Laws 2010, LB849, § 6; Laws 2014, LB526, § 2.

Effective date July 18, 2014.

38-2614 Optometrist; therapeutic pharmaceutical agents; certification of courses of instruction; board approval.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (1)(b) or (c) of section 38-2605 if such person is certified by the department, with the recommendation of the board, as qualified to use ocular pharmaceutical agents for therapeutic purposes, including the treatment of glaucoma.

(2) In order to be certified by the department under subsection (1) of this section, the optometrist shall show (a) satisfactory completion of classroom education and clinical training which emphasizes the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the board and passage of an examination approved by the board or (b) evidence of certification in another state for the use of therapeutic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 2007, LB247, § 74; Laws 2007, LB463, § 886; Laws 2014, LB526, § 3.

Effective date July 18, 2014.

38-2617 Use of pharmaceutical agents or dispensing of contact lens containing ocular pharmaceutical agent by licensed optometrist; standard of care.

(1) A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

(2) An optometrist who dispenses a contact lens containing an ocular pharmaceutical agent which is classified by the federal Food and Drug Administration as a drug shall comply with the rules and regulations of the board relating to packaging, labeling, storage, drug utilization review, and record keeping.

The board shall adopt and promulgate rules and regulations relating to packaging, labeling, storage, drug utilization review, and record keeping for such contact lenses.

Source: Laws 1993, LB 429, § 3; Laws 1998, LB 369, § 8; R.S.1943, (2003), § 71-1,135.06; Laws 2007, LB236, § 25; Laws 2007, LB463, § 890; Laws 2010, LB849, § 7.

38-2620 Nebraska Optometry Education Assistance Contract Program; purpose.

There is hereby established the Nebraska Optometry Education Assistance Contract Program for the purpose of providing opportunities for citizens of this state desiring to pursue study in the field of optometry at accredited schools and colleges outside the state. Eligibility for the program shall be limited as provided in sections 38-2622 and 38-2623.

Source: Laws 1974, LB 911, § 1; R.S.1943, (2003), § 71-1,136.05; Laws 2007, LB463, § 893; Laws 2011, LB334, § 3.

38-2622 Program; financial assistance; number of students.

Annual financial payments made under sections 38-2620 to 38-2623 shall be limited to students who participated in or were accepted into the program in the academic year 2010-11 and shall continue for the remaining academic year or years that any such student is enrolled in an accredited school or college of optometry subject to the limitation provided in section 38-2623.

Source: Laws 1974, LB 911, § 3; R.S.1943, (2003), § 71-1,136.07; Laws 2007, LB463, § 895; Laws 2011, LB334, § 4; Laws 2011, LB637, § 23.

ARTICLE 28

PHARMACY PRACTICE ACT

Section

- 38-2801. Act, how cited.
- 38-2802. Definitions, where found.
- 38-2805.01. Accrediting body, defined.
- 38-2818.01. Drug sample or sample medication; defined.
- 38-2826. Labeling, defined.
- 38-2826.01. Long-term care facility, defined.
- 38-2826.02. Medical gas, defined.
- 38-2826.03. Medical gas device, defined.
- 38-2827. Repealed. Laws 2009, LB 604, § 12.
- 38-2841. Prescription drug or device or legend drug or device, defined.
- 38-2845. Supervision, defined.
- 38-2847. Verification, defined.
- 38-2850. Pharmacy; practice; persons excepted.
- 38-2851. Pharmacist; license; requirements.
- 38-2854. Pharmacist intern; qualifications; registration; powers.
- 38-2867. Pharmacy; scope of practice; prohibited acts; violation; penalty.
- 38-2869. Prospective drug utilization review; counseling; requirements.
- 38-2870. Medical order; duration; dispensing; transmission.
- 38-2871. Prescription information; transfer; requirements.
- 38-2873. Delegated dispensing permit; requirements.
- 38-2881. Delegated dispensing permit; formularies.
- 38-2886. Delegated dispensing permit; workers; training; requirements; documentation.

Section

- 38-2888. Delegated dispensing permit; licensed health care professionals; training required.
- 38-2889. Delegated dispensing permit; advisory committees; authorized.
- 38-2893. Pharmacy Technician Registry; created; contents.
- 38-2894. Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

38-2801 Act, how cited.

Sections 38-2801 to 38-28,103 shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1; Laws 2011, LB179, § 2.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3.

38-2805.01 Accrediting body, defined.

Accrediting body means an entity recognized by the Centers for Medicare and Medicaid Services to provide accrediting services for the Medicare Part B Home Medical Equipment Services Benefit.

Source: Laws 2009, LB604, § 3.

38-2818.01 Drug sample or sample medication; defined.

Drug sample or sample medication means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug. Each sample unit shall bear a label that clearly denotes its status as a drug sample, which may include, but need not be limited to, the words sample, not for sale, or professional courtesy package.

Source: Laws 2011, LB179, § 4.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6; Laws 2010, LB849, § 8.

38-2826.01 Long-term care facility, defined.

Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 2009, LB195, § 49; Laws 2013, LB23, § 8.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2826.02 Medical gas, defined.

Medical gas means oxygen in liquid or gaseous form intended for human consumption.

Source: Laws 2009, LB604, § 4.

38-2826.03 Medical gas device, defined.

Medical gas device means a medical device associated with the administration of medical gas.

Source: Laws 2009, LB604, § 5.

38-2827 Repealed. Laws 2009, LB 604, § 12.

38-2841 Prescription drug or device or legend drug or device, defined.

(1) Prescription drug or device or legend drug or device means:

(a) A drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(i) Caution: Federal law prohibits dispensing without prescription;

(ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

(iii) “Rx Only”; or

(b) A drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend “Caution: Federal law restricts this device to sale by or on the order of a licensed health care practitioner” or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.

Source: Laws 2007, LB463, § 937; Laws 2010, LB849, § 9.

38-2845 Supervision, defined.

Supervision means the personal guidance and direction by a pharmacist of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist. Supervision of a pharmacy technician may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 941; Laws 2013, LB326, § 1.

38-2847 Verification, defined.

Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy. Verification shall occur by a pharmacist on duty in the facility, except that if a pharmacy technician performs authorized activities or functions to assist a pharmacist and the prescribed drugs or devices will be administered to persons who are patients or residents of a facility by a credentialed individual authorized to administer medications, verification may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 943; Laws 2013, LB326, § 2.

38-2850 Pharmacy; practice; persons excepted.

As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;

(2) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner regularly engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(4) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

(5) Licensed veterinarians practicing within the scope of their profession;

(6) Certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(7) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;

(8) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents as authorized under the Optometry Practice Act, and ophthalmologists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents;

(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(10) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;

(11) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian;

(12) A pharmacy or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users; and

(13) A business or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) sells, delivers, or distributes devices described in subsection (2) of section 38-2841 to patients or ultimate users or (b) purchases or receives such devices with intent to sell, deliver, or distribute to patients or ultimate users.

Source: Laws 1927, c. 167, § 121, p. 490; C.S.1929, § 71-1802; R.S.1943, § 71-1,143; Laws 1961, c. 339, § 2, p. 1062; Laws 1971, LB 350, § 2; Laws 1983, LB 476, § 7; Laws 1994, LB 900, § 3; Laws 1996, LB 414, § 7; Laws 1996, LB 1108, § 15; Laws 2000, LB 1115, § 18; Laws 2001, LB 398, § 29; Laws 2005, LB 256, § 30; R.S.Supp.,2006, § 71-1,143; Laws 2007, LB463, § 946; Laws 2009, LB604, § 7; Laws 2010, LB849, § 10.

Cross References

Nebraska Liquor Control Act, see section 53-101.

Optometry Practice Act, see section 38-2601.

38-2851 Pharmacist; license; requirements.

(1) To be eligible to take the pharmacist licensure examination, every applicant must present proof of graduation from an accredited pharmacy program. A graduate of a pharmacy program located outside of the United States and which is not accredited shall be deemed to have satisfied the requirement of being a graduate of an accredited pharmacy program upon providing evidence satisfactory to the department, with the recommendation of the board, of graduation from such foreign pharmacy program and upon successfully passing an equivalency examination approved by the board.

(2) Every applicant for licensure as a pharmacist shall (a) pass a pharmacist licensure examination approved by the board, (b) have graduated from a pharmacy program pursuant to subsection (1) of this section, and (c) present proof satisfactory to the department, with the recommendation of the board, that he or she has met one of the following requirements to demonstrate his or her current competency: (i) Within the last three years, has passed a pharmacist licensure examination approved by the board; (ii) has been in the active

practice of the profession of pharmacy in another state, territory, or the District of Columbia for at least one year within the three years immediately preceding the application for licensure; (iii) has become board certified in a specialty recognized by the Board of Pharmacy Specialties or its successor within the seven years immediately preceding the application for licensure; (iv) is duly licensed as a pharmacist in some other state, territory, or the District of Columbia in which, under like conditions, licensure as a pharmacist is granted in this state; or (v) has completed continuing competency in pharmacy that is approved by the Board of Pharmacy.

(3) Proof of the qualifications for licensure prescribed in this section shall be made to the satisfaction of the department, with the recommendation of the board. Graduation from an accredited pharmacy program shall be certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or university.

Source: Laws 1927, c. 167, § 123, p. 491; C.S.1929, § 71-1804; Laws 1939, c. 91, § 1, p. 393; C.S.Supp.,1941, § 71-1804; Laws 1943, c. 151, § 2, p. 552; R.S.1943, § 71-1,145; Laws 1971, LB 350, § 3; Laws 1974, LB 811, § 14; Laws 1983, LB 476, § 14; Laws 1996, LB 1044, § 449; Laws 1999, LB 828, § 110; R.S.Supp.,2000, § 71-1,145; Laws 2001, LB 398, § 30; Laws 2003, LB 242, § 51; Laws 2003, LB 245, § 13; Laws 2004, LB 1005, § 15; R.S.Supp.,2006, § 71-1,143.01; Laws 2007, LB296, § 345; Laws 2007, LB463, § 947; Laws 2011, LB179, § 5.

38-2854 Pharmacist intern; qualifications; registration; powers.

(1) A pharmacist intern shall be (a) a student currently enrolled in an accredited pharmacy program, (b) a graduate of an accredited pharmacy program serving his or her internship, or (c) a graduate of a pharmacy program located outside the United States which is not accredited and who has successfully passed equivalency examinations approved by the board. Intern registration based on enrollment in or graduation from an accredited pharmacy program shall expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Intern registration based on graduation from a pharmacy program located outside of the United States which is not accredited shall expire not later than fifteen months after the date of issuance of the registration or at the time of professional licensure, whichever comes first.

(2) A pharmacist intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (a) the person to whom the pharmacy license is issued or a person in the actual employ of the pharmacy licensee or (b) the delegating pharmacist designated in a delegated dispensing agreement by a hospital with a delegated dispensing permit.

(3) Performance as a pharmacist intern under the supervision of a licensed pharmacist shall be predominantly related to the practice of pharmacy and shall include the keeping of records and the making of reports required under state and federal statutes. The department, with the recommendation of the

board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship.

Source: Laws 2004, LB 1005, § 14; R.S.Supp.,2006, § 71-1,144; Laws 2007, LB463, § 950; Laws 2011, LB179, § 6.

38-2867 Pharmacy; scope of practice; prohibited acts; violation; penalty.

(1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) or (13) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) or (13) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S.1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; R.S.1943, (2003), § 71-1,147; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963; Laws 2009, LB604, § 8; Laws 2010, LB849, § 11.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2869 Prospective drug utilization review; counseling; requirements.

(1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

- (i) Therapeutic duplication;
- (ii) Drug-disease contraindications;
- (iii) Drug-drug interactions;
- (iv) Incorrect drug dosage or duration of drug treatment;
- (v) Drug-allergy interactions; and
- (vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

- (i) The name and description of the prescribed drug or device;
- (ii) The route of administration, dosage form, dose, and duration of therapy;
- (iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;
- (iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;
- (v) Techniques for self-monitoring drug therapy;
- (vi) Proper storage;
- (vii) Prescription refill information; and
- (viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

(i) The patient or caregiver refuses patient counseling;

(ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant;

(iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing practitioner;

(v) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision (12) of section 38-2850; or

(vi) A device described in subsection (2) of section 38-2841 is sold, distributed, or delivered by a business or person described in subdivision (13) of section 38-2850.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; R.S.Supp.,2006, § 71-1,147.35; Laws 2007, LB247, § 26; Laws 2007, LB463, § 965; Laws 2009, LB604, § 9; Laws 2010, LB849, § 12.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2870 Medical order; duration; dispensing; transmission.

(1) All medical orders shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(2) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The

Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(3) Except as otherwise provided in sections 28-414 to 28-414.05, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, (c) by facsimile or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile or electronic transmission of a medical order which is not signed by the practitioner. Such order shall be treated the same as an oral medical order.

(4) Except as otherwise provided in sections 28-414 to 28-414.05, any medical order transmitted by facsimile or electronic transmission shall (a) be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy, (b) identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law, and (c) serve as the original medical order if all other requirements of this subsection are satisfied. Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature or a digital signature.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

Source: Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966; Laws 2014, LB811, § 26.
Effective date July 18, 2014.

38-2871 Prescription information; transfer; requirements.

Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription;

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Source: Laws 2001, LB 398, § 36; R.S.1943, (2003), § 71-1,146.02; Laws 2007, LB463, § 967; Laws 2009, LB195, § 50.

38-2873 Delegated dispensing permit; requirements.

(1) Any person who has entered into a delegated dispensing agreement pursuant to section 38-2872 may apply to the department for a delegated dispensing permit. An applicant shall apply at least thirty days prior to the anticipated date for commencing delegated dispensing activities. Each applicant shall (a) file an application as prescribed by the department and a copy of the delegated dispensing agreement and (b) pay any fees required by the department. A hospital applying for a delegated dispensing permit shall not be required to pay an application fee if it has a pharmacy license under the Health Care Facility Licensure Act.

(2) The department shall issue or renew a delegated dispensing permit to an applicant if the department, with the recommendation of the board, determines that:

(a) The application and delegated dispensing agreement comply with the Pharmacy Practice Act;

(b) The public health and welfare is protected and public convenience and necessity is promoted by the issuance of such permit. If the applicant is a hospital, public health clinic, or dialysis drug or device distributor, the department shall find that the public health and welfare is protected and public convenience and necessity is promoted. For any other applicant, the department may, in its discretion, require the submission of documentation to demonstrate that the public health and welfare is protected and public convenience and necessity is promoted by the issuance of the delegated dispensing permit; and

(c) The applicant has complied with any inspection requirements pursuant to section 38-2874.

(3) In addition to the requirements of subsection (2) of this section, a public health clinic (a) shall apply for a separate delegated dispensing permit for each clinic maintained on separate premises even though such clinic is operated under the same management as another clinic and (b) shall not apply for a separate delegated dispensing permit to operate an ancillary facility. For purposes of this subsection, ancillary facility means a delegated dispensing site which offers intermittent services, which is staffed by personnel from a public health clinic for which a delegated dispensing permit has been issued, and at which no legend drugs or devices are stored.

(4) A delegated dispensing permit shall not be transferable. Such permit shall expire annually on July 1 unless renewed by the department. The department, with the recommendation of the board, may adopt and promulgate rules and regulations to reinstate expired permits upon payment of a late fee.

Source: Laws 2001, LB 398, § 48; R.S.1943, (2003), § 71-1,147.63; Laws 2007, LB463, § 969; Laws 2009, LB604, § 10.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2881 Delegated dispensing permit; formularies.

(1) With the recommendation of the board, the director shall approve a formulary to be used by individuals dispensing pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) With the recommendation of the board, the director shall approve the formulary to be used by public health clinics dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

- (i) Controlled substances;
- (ii) Drugs with significant dietary interactions;
- (iii) Drugs with significant drug-drug interactions; and
- (iv) Drugs or devices with complex counseling profiles.

(3)(a) With the recommendation of the board, the director shall approve a formulary to be used by dialysis drug or device distributors.

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Source: Laws 1994, LB 900, § 18; Laws 1996, LB 1044, § 467; Laws 1998, LB 1073, § 72; Laws 2001, LB 398, § 56; R.S.1943, (2003), § 71-1,147.48; Laws 2007, LB296, § 352; Laws 2007, LB463, § 977; Laws 2009, LB154, § 4.

38-2886 Delegated dispensing permit; workers; training; requirements; documentation.

(1) A delegating pharmacist shall conduct the training of public health clinic workers. The training shall be approved in advance by the board.

(2) A delegating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall be based upon the standards approved by the board.

(3) The public health clinic, the dialysis drug or device distributor, and the delegating pharmacist shall be responsible to assure that approved training has occurred and is documented.

Source: Laws 1994, LB 900, § 25; Laws 1998, LB 1073, § 78; Laws 2001, LB 398, § 60; R.S.1943, (2003), § 71-1,147.55; Laws 2007, LB463, § 982; Laws 2009, LB154, § 5.

38-2888 Delegated dispensing permit; licensed health care professionals; training required.

A delegating pharmacist shall conduct the training of all licensed health care professionals specified in subdivision (1) of section 38-2884 and who are dispensing pursuant to the delegated dispensing permit of a public health clinic. The training shall be approved in advance by the board.

Source: Laws 1994, LB 900, § 27; Laws 1996, LB 1108, § 20; Laws 1998, LB 1073, § 80; Laws 2000, LB 1115, § 20; Laws 2001, LB 398, § 62; R.S.1943, (2003), § 71-1,147.57; Laws 2007, LB463, § 984; Laws 2009, LB154, § 6.

38-2889 Delegated dispensing permit; advisory committees; authorized.

The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

Source: Laws 1994, LB 900, § 29; Laws 1996, LB 1044, § 469; Laws 1998, LB 1073, § 82; Laws 2001, LB 398, § 63; R.S.1943, (2003), § 71-1,147.59; Laws 2007, LB296, § 354; Laws 2007, LB463, § 985; Laws 2009, LB154, § 7.

38-2893 Pharmacy Technician Registry; created; contents.

(1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the registry. A listing in the registry

shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 38-2894.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 38-2890: (a) The individual's full name; (b) information necessary to identify the individual; and (c) any other information as the department may require by rule and regulation.

Source: Laws 2007, LB236, § 34; R.S.Supp.,2007, § 71-1,147.68; Laws 2009, LB288, § 2.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (17) and (19) through (24) of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83; Laws 2009, LB288, § 3.

ARTICLE 32

RESPIRATORY CARE PRACTICE ACT

Section

38-3214. Respiratory care service; requirements.

38-3215. Practice of respiratory care; limitations.

38-3214 Respiratory care service; requirements.

Any health care facility or home care agency providing inpatient or outpatient respiratory care service shall designate a medical director, who shall be a licensed physician who has special interest and knowledge in the diagnosis and treatment of respiratory problems. Such physician shall (1) be an active medical staff member of a licensed health care facility, (2) whenever possible be qualified by special training or experience in the management of acute and chronic respiratory disorders, and (3) be competent to monitor and assess the quality, safety, and appropriateness of the respiratory care services which are

being provided. The medical director shall be accessible to and assure the competency of respiratory care practitioners and shall require that respiratory care be ordered by a licensed physician, a licensed physician assistant, a nurse practitioner as defined in section 38-2312, or a certified registered nurse anesthetist as defined in section 38-704, who has medical responsibility for any patient that needs such care.

Source: Laws 1986, LB 277, § 11; R.S.1943, (2003), § 71-1,229; Laws 2007, LB463, § 1080; Laws 2012, LB788, § 1.

38-3215 Practice of respiratory care; limitations.

The practice of respiratory care shall be performed only under the direction of a medical director and upon the order of a licensed physician, a licensed physician assistant, a nurse practitioner as defined in section 38-2312, or a certified registered nurse anesthetist as defined in section 38-704.

Source: Laws 1986, LB 277, § 12; R.S.1943, (2003), § 71-1,230; Laws 2007, LB463, § 1081; Laws 2012, LB788, § 2.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section

- 38-3301. Act, how cited.
- 38-3302. Definitions, where found.
- 38-3307.01. Health care therapy, defined.
- 38-3309.01. Licensed animal therapist, defined.
- 38-3314. Unlicensed assistant, defined.
- 38-3321. Veterinarian; veterinary technician; animal therapist; license; required; exceptions.
- 38-3330. Disclosure of information; restrictions.
- 38-3331. Civil penalty; recovery; lien.
- 38-3332. Animal therapist; license; application; qualifications.
- 38-3333. Animal therapist; health care therapy; conditions; letter of referral; liability.
- 38-3334. Animal therapist; additional disciplinary grounds.
- 38-3335. Veterinarian locum tenens; issuance; requirements; term.

38-3301 Act, how cited.

Sections 38-3301 to 38-3335 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083; Laws 2009, LB463, § 2; Laws 2011, LB687, § 2.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084; Laws 2009, LB463, § 3.

38-3307.01 Health care therapy, defined.

Health care therapy means health care activities that require the exercise of judgment for which licensure is required under the Uniform Credentialing Act.

Source: Laws 2009, LB463, § 4.

38-3309.01 Licensed animal therapist, defined.

Licensed animal therapist means an individual who (1) has and maintains an undisciplined license under the Uniform Credentialing Act for a health care profession other than veterinary medicine and surgery, (2) has met the standards for additional training regarding the performance of that health care profession on animals as required by rules and regulations adopted and promulgated by the department upon the recommendation of the board, and (3) is licensed as an animal therapist by the department.

Source: Laws 2009, LB463, § 5.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian, a licensed veterinary technician, or a licensed animal therapist and who is working in veterinary medicine.

Source: Laws 2007, LB463, § 1096; Laws 2009, LB463, § 6.

38-3321 Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian, no person may perform delegated animal health care tasks in the state who is not a licensed veterinary technician or an unlicensed assistant performing such tasks within the limits established under subdivision (2) of section 38-3326, and no person may perform health care therapy on animals in the state who is not a licensed animal therapist. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

(1) An employee of the federal, state, or local government from performing his or her official duties;

(2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;

(3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;

(4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;

(5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;

(7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, retrievable transplantation of embryos on bovine, including recovering, freezing, and

transferring embryos on bovine, or the administration of drugs in the treatment of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae.

For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes;

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian or performing collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian; or

(14) A person from performing a retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, if the procedure is being performed by a person who (a) holds a doctorate degree in animal science with an emphasis in reproductive physiology from an accredited college or university and (b) has and can show proof of valid professional liability insurance.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB 1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp.,2006, § 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13; Laws 2009, LB463, § 7; Laws 2012, LB686, § 1.

38-3330 Disclosure of information; restrictions.

(1) Unless required by any state or local law for contagious or infectious disease reporting or other public health and safety purpose, no veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to disclose any information concerning the veterinarian's care of an animal except under a written authorization or other waiver by the veterinarian's client or pursuant to a court order or a subpoena. A veterinarian who releases information under a written authorization or other waiver by the client or pursuant to a court order or a subpoena is not liable to the client or any other person.

(2) The privilege provided by this section is waived to the extent that the veterinarian's client or the owner of the animal places the veterinarian's care

and treatment of the animal or the nature and extent of injuries to the animal at issue in any civil or criminal proceeding.

(3) The privilege provided by this section is waived to the extent and for purposes of notifying any owner or manager of cattle that have a significant risk for exposure to bovine trichomoniasis. A veterinarian who releases information about the risk for exposure to bovine trichomoniasis is not liable to the client or any other person.

(4) For purposes of this section, veterinarian includes the employees or agents of the licensed veterinarian while acting for or on behalf of such veterinarian.

Source: Laws 2000, LB 833, § 5; R.S.1943, (2003), § 71-1,164; Laws 2007, LB463, § 1112; Laws 2013, LB423, § 3.

38-3331 Civil penalty; recovery; lien.

(1) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who engages in the practice of veterinary medicine and surgery without being licensed or otherwise authorized to do so under the Veterinary Medicine and Surgery Practice Act shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for the second or subsequent offense. If a violation continues after notification, this constitutes a separate offense.

(2) The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB463, § 8.

38-3332 Animal therapist; license; application; qualifications.

Each applicant for a license as an animal therapist in this state shall present to the department:

(1) Proof that the applicant holds and maintains an undisciplined license under the Uniform Credentialing Act for a health care profession other than veterinary medicine and surgery;

(2) Proof that the applicant has met the standards for additional training regarding the performance of that health care profession on animals as required by rules and regulations adopted and promulgated by the department upon the recommendation of the board; and

(3) Such other information and proof as the department, with the recommendation of the board, may require by rule and regulation.

Source: Laws 2009, LB463, § 9.

38-3333 Animal therapist; health care therapy; conditions; letter of referral; liability.

(1) A licensed animal therapist may perform health care therapy on an animal only if:

(a) The health care therapy is consistent with the licensed animal therapist's training required for the license referred to under subdivision (1) of section 38-3332;

(b) The owner of the animal presents to the licensed animal therapist a prior letter of referral for health care therapy that includes a veterinary medical diagnosis and evaluation completed by a licensed veterinarian who has a veterinarian-client-patient relationship with the owner and the animal and has made the diagnosis and evaluation within ninety days immediately preceding the date of the initiation of the health care therapy; and

(c) The licensed animal therapist provides health care therapy reports at least monthly to the referring veterinarian, except that a report is not required for any month in which health care therapy was not provided.

(2) A licensed veterinarian who prepares a letter of referral for health care therapy by a licensed animal therapist shall not be liable for damages caused to the animal as a result of the health care therapy performed by the licensed animal therapist.

Source: Laws 2009, LB463, § 10.

38-3334 Animal therapist; additional disciplinary grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice as a licensed animal therapist may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee is subjected to disciplinary measures with regard to his or her license referred to under subdivision (1) of section 38-3332.

Source: Laws 2009, LB463, § 11.

38-3335 Veterinarian locum tenens; issuance; requirements; term.

When circumstances indicate a need for the issuance of a veterinarian locum tenens in the State of Nebraska, the department, with the recommendation of the board, may issue a veterinarian locum tenens to an individual who holds an active license to practice veterinary medicine and surgery in another state if the requirements regarding education and examination for licensure in that state are equal to or exceed the requirements regarding education and examination for licensure in Nebraska. A veterinarian locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2011, LB687, § 3.

ARTICLE 34

GENETIC COUNSELING PRACTICE ACT

Section

- 38-3401. Act, how cited.
38-3402. Definitions, where found.
38-3403. Active candidate, defined.
38-3404. Certification examination, defined.
38-3405. Genetic counseling, defined.
38-3406. Genetic counseling intern, defined.
38-3407. Genetic counselor, defined.
38-3408. National genetic counseling board, defined.
38-3409. National medical genetics board, defined.
38-3410. Physician, defined.
38-3411. Qualified supervisor, defined.
38-3412. State board, defined.
38-3413. Supervisee, defined.
38-3414. Supervision, defined.
38-3415. Scope of practice.
38-3416. License required.
38-3417. Act; persons exempt.
38-3418. Applicant; certification required.
38-3419. Reciprocity; individual practicing before January 1, 2013; licensure; qualification.
38-3420. Provisional license; requirements; renewal; expiration; conditions; application for extension; requirements.
38-3421. License required; use of titles prohibited.
38-3422. Rules and regulations.
38-3423. Fees.
38-3424. Abortion counseling or referral; act; how construed; refusal to participate in counseling or referral; how treated.
38-3425. Department; maintain directory.

38-3401 Act, how cited.

Sections 38-3401 to 38-3425 shall be known and may be cited as the Genetic Counseling Practice Act.

Source: Laws 2012, LB831, § 1.

38-3402 Definitions, where found.

For purposes of the Genetic Counseling Practice Act, the definitions found in sections 38-3403 to 38-3414 shall apply.

Source: Laws 2012, LB831, § 2.

38-3403 Active candidate, defined.

Active candidate means an individual who has (1) met the requirements established by the national genetic counseling board to take the national certification examination in general genetics or genetic counseling and (2) been granted active candidate status by the national genetic counseling board.

Source: Laws 2012, LB831, § 3.

38-3404 Certification examination, defined.

Certification examination means the examination offered by either the national genetic counseling board or the national medical genetics board.

Source: Laws 2012, LB831, § 4.

38-3405 Genetic counseling, defined.

Genetic counseling means the provision of services described in section 38-3415.

Source: Laws 2012, LB831, § 5.

38-3406 Genetic counseling intern, defined.

Genetic counseling intern means a student enrolled in a genetic counseling program accredited by the national genetic counseling board.

Source: Laws 2012, LB831, § 6.

38-3407 Genetic counselor, defined.

Genetic counselor means an individual licensed under the Genetic Counseling Practice Act.

Source: Laws 2012, LB831, § 7.

38-3408 National genetic counseling board, defined.

National genetic counseling board means the American Board of Genetic Counseling or its successor or equivalent.

Source: Laws 2012, LB831, § 8.

38-3409 National medical genetics board, defined.

National medical genetics board means the American Board of Medical Genetics or its successor or equivalent.

Source: Laws 2012, LB831, § 9.

38-3410 Physician, defined.

Physician means an individual licensed under the Medicine and Surgery Practice Act to practice medicine and surgery or osteopathic medicine and surgery.

Source: Laws 2012, LB831, § 10.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

38-3411 Qualified supervisor, defined.

Qualified supervisor means a genetic counselor or a physician.

Source: Laws 2012, LB831, § 11.

38-3412 State board, defined.

State board means the Board of Medicine and Surgery.

Source: Laws 2012, LB831, § 12.

38-3413 Supervisee, defined.

Supervisee means an individual holding a provisional license issued under section 38-3420.

Source: Laws 2012, LB831, § 13.

38-3414 Supervision, defined.

Supervision means the overall responsibility to assess the work of a supervisee, including regular meetings and chart review by a qualified supervisor pursuant to an annual supervision contract signed by the qualified supervisor and the supervisee which is on file with both parties. The presence of a qualified supervisor is not required during the performance of services by the supervisee.

Source: Laws 2012, LB831, § 14.

38-3415 Scope of practice.

The scope of practice of a genetic counselor is:

(1) Obtaining and evaluating individual, family, and medical histories to determine genetic risk for genetic or medical conditions and diseases in a patient, his or her offspring, and other family members;

(2) Discussing features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;

(3) Identifying and coordinating of genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment;

(4) Integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases;

(5) Explaining the clinical implications of genetic laboratory tests and other diagnostic studies and their results;

(6) Evaluating the client's or family's responses to genetic or medical conditions identified by the genetic assessment or risk of recurrence and providing client-centered counseling and anticipatory guidance;

(7) Identifying and utilizing community resources that provide medical, educational, financial, and psychosocial support and advocacy; and

(8) Providing written documentation of medical, genetic, and counseling information for families and health care professionals.

Source: Laws 2012, LB831, § 15.

38-3416 License required.

Except as provided in the Genetic Counseling Practice Act, on and after January 1, 2013, no individual shall engage in the practice of genetic counseling unless he or she is licensed under the act.

Source: Laws 2012, LB831, § 16.

38-3417 Act; persons exempt.

The Genetic Counseling Practice Act does not apply to:

(1) An individual licensed under the Uniform Credentialing Act to practice a profession other than genetic counseling when acting within the scope of his or her profession and doing work of a nature consistent with his or her training, except that such individual shall not hold himself or herself out to the public as a genetic counselor;

(2) An individual employed by the United States Government or an agency thereof to provide genetic counseling if he or she provides genetic counseling solely under the direction and control of the organization by which he or she is employed;

(3) A genetic counseling intern if genetic counseling performed by the genetic counseling intern is an integral part of the course of study and is performed under the direct supervision of a genetic counselor who is on duty and available in the assigned patient care area and if the genetic counseling intern is designated by the title genetic counseling intern; or

(4) An individual certified by the national genetic counseling board or the national medical genetics board to provide genetic counseling who permanently resides outside the state and is providing consulting services within the state for a period of two months or less.

Source: Laws 2012, LB831, § 17.

38-3418 Applicant; certification required.

Except as provided in section 38-3420, an applicant for licensure as a genetic counselor shall provide satisfactory evidence that he or she is certified as a genetic counselor by either the national genetic counseling board or the national medical genetics board.

Source: Laws 2012, LB831, § 18.

38-3419 Reciprocity; individual practicing before January 1, 2013; licensure; qualification.

(1) The department, with the recommendation of the state board, may issue a license under the Genetic Counseling Practice Act based on licensure in another jurisdiction to an individual who meets the requirements of the Genetic Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the state board.

(2) An individual practicing genetic counseling in Nebraska before January 1, 2013, may apply for licensure under the act if, on or before July 1, 2013, he or she:

(a) Provides satisfactory evidence to the state board that he or she (i) has practiced genetic counseling for a minimum of ten years preceding January 1, 2013, (ii) has a postbaccalaureate degree at the master's level or higher in genetics or a related field of study, and (iii) has never failed the certification examination;

(b) Submits three letters of recommendation from at least one individual practicing genetic counseling who qualifies for licensure under the Genetic Counseling Practice Act and either a clinical geneticist or medical geneticist certified by the national medical genetics board. An individual submitting a letter of recommendation shall have worked with the applicant in an employment setting during at least five of the ten years preceding submission of the letter and be able to attest to the applicant's competency in providing genetic counseling; and

(c) Provides documentation of attending approved continuing education programs within the five years preceding application.

Source: Laws 2012, LB831, § 19.

38-3420 Provisional license; requirements; renewal; expiration; conditions; application for extension; requirements.

(1) The department, on the recommendation of the state board, may issue a provisional license to practice genetic counseling to an individual who meets all of the requirements for licensure under the Genetic Counseling Practice Act except for certification and who has been granted active candidate status. Such license shall be valid for one year from the date of issuance and may be renewed for one additional year if the applicant fails the certification examination one time. The provisional license shall expire automatically upon the earliest of the following:

(a) Issuance of a license as a genetic counselor under the Genetic Counseling Practice Act;

(b) Thirty days after the applicant fails to pass the complete certification examination; or

(c) The date printed on the provisional license.

(2) An application for extension of a provisional license shall be signed by a qualified supervisor. A provisional licensee shall work at all times under the supervision of a qualified supervisor.

Source: Laws 2012, LB831, § 20.

38-3421 License required; use of titles prohibited.

On and after January 1, 2013, no individual shall hold himself or herself out as a genetic counselor unless he or she is licensed in accordance with the Genetic Counseling Practice Act. An individual who is not so licensed may not use, in connection with his or her name or place of business, the title genetic counselor, licensed genetic counselor, gene counselor, genetic consultant, or genetic associate, or any words, letters, abbreviations, or insignia indicating or implying that he or she holds a license under the act.

Source: Laws 2012, LB831, § 21.

38-3422 Rules and regulations.

The department shall adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of genetic counseling shall be carried on. The department shall have the power to enforce the Genetic Counseling Practice Act.

Source: Laws 2012, LB831, § 22.

38-3423 Fees.

The department shall establish and collect fees for credentialing under the Genetic Counseling Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2012, LB831, § 23.

38-3424 Abortion counseling or referral; act; how construed; refusal to participate in counseling or referral; how treated.

The Genetic Counseling Practice Act shall not be construed to require any genetic counselor to counsel or refer for abortion, and licensing of a genetic counselor shall not be contingent upon his or her participation in counseling or referral with respect to abortion. The refusal of a genetic counselor to partici-

pate in counseling or referral with respect to abortion shall not form the basis for any claim of damages on account of the refusal or for any disciplinary or recriminatory action against the genetic counselor if the genetic counselor informs the patient that the genetic counselor will not participate in counseling or referral with respect to abortion and offers to direct the patient to the online directory of licensed genetic counselors maintained by the department.

Source: Laws 2012, LB831, § 24.

38-3425 Department; maintain directory.

The department shall maintain an online directory of all genetic counselors licensed by the department.

Source: Laws 2012, LB831, § 25.



CHAPTER 39

HIGHWAYS AND BRIDGES

Article.

2. Signs. 39-204 to 39-210.
8. Bridges.
 - (b) Contracts for Construction and Repair of Bridges. 39-810.
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13. State Highways.
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 - (l) State Recreation Roads. 39-1390 to 39-1392.
17. County Roads. Land Acquisition, Establishment, Alteration, Survey, Relocation, Vacation, and Abandonment.
 - (a) Land Acquisition. 39-1702.
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21. Functional Classification. 39-2123.
22. Nebraska Highway Bonds. 39-2204 to 39-2216.
27. Build Nebraska Act. 39-2701 to 39-2705.

ARTICLE 2

SIGNS

Section

- 39-204. Informational signs; erection; conform with rules and regulations; minimum service requirements.
- 39-205. Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.
- 39-210. Sign panels; qualification of activities; minimum requirements; violation; effect.

39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Roads and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

Source: Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB926, § 1.

39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.

(1) Applicants for business signs shall furnish business signs to the Department of Roads and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

Source: Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB926, § 2.

39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Roads assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

Source: Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB926, § 3.

ARTICLE 8

BRIDGES

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

Section

39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars. All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder. All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials. Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads. All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project. The total costs of each such separate project shall be included in the annual reports to the Board of Public Roads Classifications and Standards as required by section 39-2120. All bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1.

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

ARTICLE 10

RURAL MAIL ROUTES

Section

39-1010. Mailboxes; location; violation; duty of Department of Roads.

39-1010 Mailboxes; location; violation; duty of Department of Roads.

(1) Except as otherwise provided in this subsection, all mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more as measured from the edge of the hard surfacing. Along hard-surfaced highways having a shoulder

width of less than six feet, the Department of Roads shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the Department of Roads may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic lane of ten feet in width at mailbox turnouts. For a hard-surfaced highway having either a mailbox turnout or a hard-surfaced shoulder width of eight feet or more, the mailbox shall be placed such that no part of the mailbox extends beyond the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder and the mailbox support shall be placed a minimum of one foot outside the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder.

(2) It shall be the duty of the Department of Roads to notify the owner of all mailboxes in violation of the provisions of this section, and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he or she is notified of such violations.

Source: Laws 1961, c. 194, § 1, p. 593; Laws 2014, LB757, § 1.

Effective date July 18, 2014.

ARTICLE 11

STATE HIGHWAY COMMISSION

Section

39-1111. State Highway Commission; quarterly report; contents; file with Governor; file with Clerk of the Legislature.

39-1111 State Highway Commission; quarterly report; contents; file with Governor; file with Clerk of the Legislature.

The State Highway Commission shall file with the Governor each quarter a report fully and accurately showing conditions existing in the state with reference to the state's highway building and as to construction and maintenance work. Such reports shall further contain an itemized statement of all expenditures and the purposes for such expenditures since the last report submitted to the Governor. Each of such reports shall further contain an itemized budget of all proposed expenditures for the ensuing quarter. A copy of such report shall be filed electronically with the Clerk of the Legislature and be made available to the public. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the secretary of the commission.

Source: Laws 1953, c. 334, § 11, p. 1099; Laws 1979, LB 322, § 11; Laws 2012, LB782, § 39.

ARTICLE 13

STATE HIGHWAYS

(b) INTERGOVERNMENTAL RELATIONS

Section

39-1307. Department of Roads; political subdivisions; highways, roads, streets; constructing, maintaining, improving, financing; agreements.

(j) MISCELLANEOUS

39-1359. Rights-of-way; inviolate for state and Department of Roads purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable.

Section

- 39-1359.01. Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.
- 39-1365.01. State highway system; plans; department; duties; priorities.
- 39-1365.02. State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(l) STATE RECREATION ROADS

- 39-1390. State Recreation Road Fund; created; use; preferences; maintenance; investment.
- 39-1391. Exterior access roads; interior service roads; plans; reviewed annually; report; contents.
- 39-1392. Exterior access roads; interior service roads; Department of Roads; develop and file plans with Governor and Legislature; reviewed annually.

(b) INTERGOVERNMENTAL RELATIONS

39-1307 Department of Roads; political subdivisions; highways, roads, streets; constructing, maintaining, improving, financing; agreements.

The department, on behalf of the state, and any political or governmental subdivision or public corporation of this state shall have the authority to enter into agreements with each other respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of highways, roads, streets, connecting links, rights-of-way, including but not limited to, canals, ditches, or power, telephone, water, gas, sewer and other service lines owned by such political or governmental subdivision or public corporation. Such agreements may, in the discretion of the parties, include provision for indemnification of, or sharing of, any liability of the parties for future damages occurring to other persons or property and which may arise under the terms of the contract authorized by this section.

The department, on behalf of the state, and any political or governmental subdivision or public corporation of this state shall have the authority to enter into agreements with each other whereby the department purchases from any such entity the federal-aid transportation funds made available to such entity. Such funds may be purchased at a discount rate determined by the department to be in its best interest. Such agreements shall provide that the funds obtained from such sale by the political or governmental subdivision or public corporation be expended for cost of construction, reconstruction, maintenance, and repair of public highways, streets, roads, or bridges and facilities, appurtenances, and structures deemed necessary in connection therewith. All entities which sell federal-aid transportation funds to the department shall provide proof to the department that the proceeds of the sale were expended for the described purposes. The manner in which the proof shall be provided and the time at which proof shall be made shall be in the discretion of the department and shall be set forth in the agreement.

When the installation, repair, or modification of an electric generating facility necessitates increased use of a street or road the department may (1) temporarily or permanently provide for the construction and maintenance of such street or road, (2) cooperate with the county or township to maintain such street or road, or (3) designate the street or road as part of the state highway system as provided in section 39-1309. The department shall consider whether improving or maintaining the street or road will benefit the general public, the

present condition of the street or road, and the actual or potential traffic volume of such street or road.

Source: Laws 1955, c. 148, § 7, p. 420; Laws 1967, c. 238, § 1, p. 636; Laws 1981, LB 14, § 1; Laws 2011, LB98, § 1.

(j) MISCELLANEOUS

39-1359 Rights-of-way; inviolate for state and Department of Roads purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable.

(1) The rights-of-way acquired by the department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of the department or as otherwise provided in subsections (2) and (3) of this section.

(2) A temporary use of the state highway system, other than a freeway, by a county, city, or village, including full and partial lane closures, shall be allowed for special events, as designated by a county, city, or village, under the following conditions:

(a) The roadway is located within the official corporate limits or zoning jurisdiction of the county, city, or village;

(b) A county, city, or village making use of the state highway system for a special event shall have the legal duty to protect the highway property from any damage that may occur arising out of the special event and the state shall not have any such duty during the time the county, city, or village is in control of the property as specified in the notice provided pursuant to subsection (3) of this section;

(c) Any existing statutory or common law duty of the state to protect the public from damage, injury, or death shall become the duty of the county, city, or village making use of the state highway system for the special event, and the state shall not have such statutory or common law duty during the time the county, city, or village is in control of the property as specified in the notice provided pursuant to subsection (3) of this section; and

(d) The county, city, or village using the state highway system for a special event shall formally, by official governing body action, acknowledge that it accepts the duties set out in this subsection and, if a claim is made against the state, shall indemnify, defend, and hold harmless the state from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event.

(3) If a county, city, or village has met the requirements of subsection (2) of this section for holding a special event and has provided thirty days' advance written notice of the special event to the department, the county, city, or village may proceed with its temporary use of the state highway system. The notice shall specify the date and time the county, city, or village will assume control of the state highway property and relinquish control of such state highway property to the state.

(4) The Political Subdivisions Tort Claims Act shall apply to any claim arising during the time specified in a notice provided by a political subdivision pursuant to subsection (3) of this section.

Source: Laws 1955, c. 148, § 59, p. 442; Laws 2011, LB589, § 4.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.

For purposes of this section, the definitions in section 39-1302 apply.

The Department of Roads shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of each year. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB43, § 1; Laws 2014, LB698, § 1.
Effective date July 18, 2014.

39-1365.01 State highway system; plans; department; duties; priorities.

The Department of Roads shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

Source: Laws 1988, LB 632, § 24; Laws 2010, LB821, § 1.

39-1365.02 State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(1) The Department of Roads shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The Department of Roads shall transmit electronically to the Legislature, by December 1 of each year, a report on the needs of the state highway system and the department's planning procedures. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth; and

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs.

Source: Laws 1988, LB 632, § 25; Laws 2012, LB782, § 40.

(I) STATE RECREATION ROADS

39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the Department of Roads and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that transfers may be made from the fund to the Game and Parks State Park Improvement and Maintenance Fund at the direction of the Legislature through July 31, 2014. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the Department of Roads and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369;

Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1; Laws 2014, LB906, § 15.
Effective date March 30, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

39-1391 Exterior access roads; interior service roads; plans; reviewed annually; report; contents.

The Game and Parks Commission shall develop and file with the Governor and the Legislature a one-year plan and a long-range five-year plan of proposed construction and improvements for all exterior access roads and interior service roads as provided in section 39-1390, based on priority of needs and calculated to contribute to the orderly development of an integrated system of roads with the facilities maintained or managed by the Game and Parks Commission. The first such plan shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. All plans shall specify the criteria employed in setting the priorities and shall also identify any additional recreation road requirements which may exist but are not reflected in the one-year and five-year plans. The commission shall also, at the time it files such plans and extensions thereof, report the construction and improvements certified during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 1; Laws 2012, LB782, § 41.

39-1392 Exterior access roads; interior service roads; Department of Roads; develop and file plans with Governor and Legislature; reviewed annually.

The Department of Roads shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and improvement accomplished during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 2; Laws 2012, LB782, § 42.

ARTICLE 17

**COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT,
ALTERATION, SURVEY, RELOCATION, VACATION,
AND ABANDONMENT**

(a) LAND ACQUISITION

Section

39-1702. County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board; annexation by city or village; effect.

(a) LAND ACQUISITION

39-1702 County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board; annexation by city or village; effect.

(1) The county board is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interest therein, or any easements deemed to be necessary or desirable for present or future county road purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate.

(2) County road purposes, as referred to in subsection (1) of this section, shall include provisions for, but shall not be limited to, the following: (a) The establishment, construction, reconstruction, relocation, improvement, or maintenance of any county road. The right-of-way for such roads shall be of such width as is deemed necessary by the county board; (b) adequate drainage in connection with any road, cut, fill, channel change, or the maintenance thereof; (c) shops, offices, storage buildings and yards, and road maintenance or construction sites; (d) road materials, sites for the manufacture of road materials, and access roads to such sites; (e) the preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to county roads and the culture of trees and flora which may increase the scenic beauty of county roads; (f) roadside areas or parks adjacent to or near any county roads; (g) the exchange of property for other property to be used for rights-of-way or other purposes set forth in this subsection or subsection (1) of this section if the interest of the county will be served and acquisition costs thereby reduced; (h) the maintenance of an unobstructed view of any portion of a county road so as to promote the safety of the traveling public; (i) the construction and maintenance of stock trails and cattle passes; (j) the erection and maintenance of marking and warning signs and traffic signals; and (k) the construction and maintenance of sidewalks and road illumination.

(3) The county board may (a) designate and establish controlled-access facilities, (b) design, construct, maintain, improve, alter, and vacate such facilities, and (c) regulate, restrict, or prohibit access to such facilities so as to best serve the traffic for which such facilities are intended. No road, street, or highway shall be opened into or connected with such facility without the consent of the county board. In order to carry out the purposes of this subsection, the county board may acquire, in public or private property, such rights of access as are deemed necessary. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest. An adjoining landowner shall not be denied reasonable means of egress and ingress. When a county road adjoins the corporate limits of any city or village, the powers granted in this subsection may be exercised by the governing body of such city or village.

(4) When a city or village annexes a county road, the powers that are granted to the county board in this section and any recorded or prescriptive easement

held by the county on the annexed property for road purposes are transferred to and may be exercised by the governing body of the city or village.

Source: Laws 1957, c. 155, art. IV, § 2, p. 541; Laws 1973, LB 493, § 2; Laws 2013, LB377, § 1.

ARTICLE 18

COUNTY ROADS. MAINTENANCE

Section

39-1802. Public roads; drainage facilities; construction and maintenance; authority of county board or road overseer; damage to property outside of right-of-way; notice.

39-1802 Public roads; drainage facilities; construction and maintenance; authority of county board or road overseer; damage to property outside of right-of-way; notice.

The county board shall have the authority to construct, maintain, and improve drainage facilities on the public roads of the county. The county board also shall have the authority to make channel changes, control erosion, and provide stream protection or any other control measures beyond the road right-of-way limits wherever it is deemed necessary in order to protect the roads and drainage facilities from damage. The county board or road overseer shall have the authority to enter upon private or public property for the purposes listed in this section. The county board or road overseer shall make a record of the condition of the premises at the time of entry upon the premises or a record of any claimed encroachment of the road right-of-way that can be used in the event of damages to private property. In case of any damage to the premises, the county board shall pay the record owner of the premises the amount of the damages. Upon failure of the landowner and county board to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705. The county board or road overseer shall give the record owner of the premises ten days' notice of its intention to enter upon private property for purposes listed in this section or to modify, relocate, remove, or destroy any encroaching private property in the county road right-of-way for such purposes. Upon notice the record owner shall have five days to respond to the county board or road overseer. In the event of an emergency or a threat to public health, safety, or welfare, the notice requirement of this section may be waived.

Source: Laws 1957, c. 155, art. V, § 2, p. 552; Laws 2013, LB386, § 1.

ARTICLE 21

FUNCTIONAL CLASSIFICATION

Section

39-2123. Repealed. Laws 2014, LB 757, § 4.

39-2123 Repealed. Laws 2014, LB 757, § 4.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section

39-2204. Attorney General; legal advisor to commission; Auditor of Public Accounts; books; audit annually.

Section

- 39-2215. Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.
- 39-2215.01. Highway Restoration and Improvement Bond Fund; created; use; investment.
- 39-2216. Legislature; holders of bonds; pledges not to repeal, diminish, or apply funds for other uses.

39-2204 Attorney General; legal advisor to commission; Auditor of Public Accounts; books; audit annually.

(1) The Attorney General shall serve as legal advisor to the commission and, to assist him or her in the performance of his or her duties as such, may authorize the commission to employ special bond counsel.

(2) The Auditor of Public Accounts shall audit the books of the commission at such time as he or she determines necessary.

Source: Laws 1969, c. 309, § 4, p. 1108; Laws 2011, LB337, § 2.

39-2215 Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Roads, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the Department of Roads shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the Department of Roads shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

Source: Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

39-2215.01 Highway Restoration and Improvement Bond Fund; created; use; investment.

(1) There is hereby created in the state treasury a fund to be known as the Highway Restoration and Improvement Bond Fund.

(2) If bonds are issued pursuant to subsection (2) of section 39-2223, all motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use, motor vehicle registration fees, and other highway-user taxes which are retained by the state and allocated to the bond fund from the Highway Trust Fund shall be hereby irrevocably pledged for the terms of the bonds issued after July 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited directly in the bond fund for such purpose. Of the money in the bond fund not required for such purpose, such remaining money may be used for the purchase for retirement of the bonds in the open market or for any other lawful purpose related to the issuance of bonds, and the balance, if any, shall be transferred monthly to the Highway Cash Fund for such use as may be provided by law.

(3) The State Treasurer shall disburse the money in the bond fund as directed by resolution of the commission. All disbursements from the bond fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the bond fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1988, LB 632, § 10; Laws 1990, LB 602, § 2; Laws 1994, LB 1066, § 26; Laws 1994, LB 1160, § 50; Laws 1995, LB 182, § 23; Laws 2011, LB289, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

39-2216 Legislature; holders of bonds; pledges not to repeal, diminish, or apply funds for other uses.

The Legislature hereby irrevocably pledges and agrees with the holders of the bonds issued under the Nebraska Highway Bond Act that so long as such bonds remain outstanding and unpaid it shall not repeal, diminish, or apply to any other purposes the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use, motor vehicle registration fees, and such other highway-user taxes which may be imposed by state law and allocated to the fund or bond fund, as the case may be, if to do so would result in fifty percent of the amount deposited in the fund or bond fund in each year being less than the amount equal to the maximum annual principal and interest requirements of such bonds.

Source: Laws 1969, c. 309, § 16, p. 1112; Laws 1988, LB 632, § 11; Laws 1994, LB 1160, § 51; Laws 1995, LB 182, § 24; Laws 2011, LB289, § 5.

ARTICLE 27

BUILD NEBRASKA ACT

Section

39-2701. Act, how cited.

39-2702. Terms, defined.

39-2703. State Highway Capital Improvement Fund; created; use; investment.

39-2704. Fund; uses enumerated.

39-2705. Rules and regulations.

39-2701 Act, how cited.

Sections 39-2701 to 39-2705 shall be known and may be cited as the Build Nebraska Act.

Source: Laws 2011, LB84, § 1.

39-2702 Terms, defined.

For purposes of the Build Nebraska Act:

(1) Department means the Department of Roads;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

Source: Laws 2011, LB84, § 2.

39-2703 State Highway Capital Improvement Fund; created; use; investment.

(1) The State Highway Capital Improvement Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132 and any other money as determined by the Legislature.

(2) The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2011, LB84, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

39-2704 Fund; uses enumerated.

The fund shall be used as follows:

(1) At least twenty-five percent of the money credited to the fund pursuant to section 77-27,132 each fiscal year shall be used, as determined by the department, for construction of the expressway system and federally designated high priority corridors; and

(2) The remaining money credited to the fund pursuant to section 77-27,132 each fiscal year shall be used to pay for surface transportation projects of the highest priority as determined by the department.

Source: Laws 2011, LB84, § 4.

39-2705 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Build Nebraska Act.

Source: Laws 2011, LB84, § 5.



CHAPTER 40

HOMESTEADS

Section

- 40-102. Homestead; selection of property.
40-105. Homestead; selection; procedure.
40-115. Repealed. Laws 2014, LB 964, § 4.

40-102 Homestead; selection of property.

(1) If the claimant is married, the homestead may be selected from the separate property of the claimant or, with the consent of the claimant's spouse, from the separate property of the claimant's spouse.

(2) If the claimant is not married, the homestead may be selected from any of his or her property.

Source: Laws 1879, § 2, p. 58; R.S.1913, § 3077; C.S.1922, § 2817; C.S.1929, § 40-102; R.S.1943, § 40-102; Laws 2010, LB907, § 1; Laws 2014, LB964, § 1.
Effective date July 18, 2014.

40-105 Homestead; selection; procedure.

When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 40-103 is levied upon the lands or tenements of a claimant, the claimant may at any time prior to confirmation of sale apply to the district court in the county in which the homestead is situated for an order to determine whether or not such lands or tenements, or any part thereof, are exempt as a homestead and, if so, the value thereof.

Source: Laws 1879, § 5, p. 58; R.S.1913, § 3080; C.S.1922, § 2820; C.S.1929, § 40-105; R.S.1943, § 40-105; Laws 1947, c. 153, § 1, p. 420; Laws 2010, LB907, § 2; Laws 2014, LB964, § 2.
Effective date July 18, 2014.

40-115 Repealed. Laws 2014, LB 964, § 4.



CHAPTER 42

HUSBAND AND WIFE

Article.

3. Divorce, Alimony, and Child Support.
 - (d) Domestic Relations Actions. 42-353 to 42-374.
9. Domestic Violence.
 - (a) Protection from Domestic Abuse Act. 42-903 to 42-930.
11. Spousal Pension Rights Act. 42-1102.

ARTICLE 3

DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

Section

- 42-353. Complaint; contents.
- 42-358.02. Delinquent child support payments, spousal support payments, and medical support payments; interest; rate; report; Title IV-D Division; duties.
- 42-361. Marriage irretrievably broken; findings; decree issued without hearing; when.
- 42-361.01. Legal separation; findings.
- 42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.
- 42-369. Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.
- 42-371. Judgments and orders; liens; release; subordination; procedure; time limitation on lien; security; attachment; priority.
- 42-374. Annulment; conditions.

(d) DOMESTIC RELATIONS ACTIONS

42-353 Complaint; contents.

The pleadings required by sections 42-347 to 42-381 shall be governed by the rules of pleading in civil actions promulgated under section 25-801.01. The complaint shall include the following:

(1) The name and address of the plaintiff and his or her attorney, except that a plaintiff who is living in an undisclosed location because of safety concerns is only required to disclose the county and state of his or her residence and, in such case, shall provide an alternative address for the mailing of notice;

(2) The name and address, if known, of the defendant;

(3) The date and place of marriage;

(4) The name and year of birth of each child whose custody or welfare may be affected by the proceedings and whether (a) a parenting plan as provided in the Parenting Act has been developed and (b) child custody, parenting time, visitation, or other access or child support is a contested issue;

(5) If the plaintiff is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;

(6) Reference to any existing restraining orders, protection orders, or criminal no-contact orders regarding any party to the proceedings;

(7) A statement of the relief sought by the plaintiff, including adjustment of custody, property, and support rights; and

(8) An allegation that the marriage is irretrievably broken if the complaint is for dissolution of marriage or an allegation that the two persons who have been legally married shall thereafter live separate and apart if the complaint is for a legal separation.

Source: Laws 1972, LB 820, § 7; Laws 1997, LB 229, § 13; Laws 2004, LB 1207, § 21; Laws 2007, LB221, § 1; Laws 2007, LB554, § 30; Laws 2008, LB1014, § 29; Laws 2012, LB899, § 1.

Cross References

Complaint, include whether to be heard by county or district court, see section 25-2740.

Parenting Act, see section 43-2920.

42-358.02 Delinquent child support payments, spousal support payments, and medical support payments; interest; rate; report; Title IV-D Division; duties.

(1) All delinquent child support payments, spousal support payments, and medical support payments shall draw interest at the rate specified in section 45-103 in effect on the date of the most recent order or decree. Such interest shall be computed as simple interest.

(2) All child support payments, spousal support payments, and medical support payments shall become delinquent the day after they are due and owing, except that no obligor whose support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the support payment is due, (b) the total amount of support payments to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for support payments are continuous and occurring. Interest shall not accrue until thirty days after such payments are delinquent.

(3) The court shall order the determination of the amount of interest due, and such interest shall be payable in the same manner as the support payments upon which the interest accrues subject to subsection (2) of this section or unless it is waived by agreement of the parties. The Title IV-D Division of the Department of Health and Human Services shall compute interest and identify delinquencies pursuant to this section on the payments received by the State Disbursement Unit pursuant to section 42-369. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney.

(4) Support order payments shall be credited in the following manner:

(a) First, to the payments due for the current month in the following order: Child support payments, then spousal support payments, and lastly medical support payments;

(b) Second, toward any payment arrearage owing, in the following order: Child support payment arrearage, then spousal support payment arrearage, and lastly medical support payment arrearage; and

(c) Third, toward the interest on any payment arrearage, in the following order: Child support payment arrearage interest, then spousal support payment arrearage interest, and lastly medical support payment arrearage interest.

(5) Interest which may have accrued prior to September 6, 1991, shall not be affected or altered by changes to this section which take effect on such date. All delinquent support order payments and all decrees entered prior to such date shall draw interest at the effective rate as prescribed by this section commencing as of such date.

Source: Laws 1975, LB 212, § 4; Laws 1981, LB 167, § 31; Laws 1983, LB 371, § 2; Laws 1984, LB 845, § 26; Laws 1985, Second Spec. Sess., LB 7, § 11; Laws 1987, LB 569, § 1; Laws 1991, LB 457, § 2; Laws 1997, LB 18, § 1; Laws 2000, LB 972, § 11; Laws 2005, LB 396, § 2; Laws 2007, LB296, § 58; Laws 2009, LB288, § 4.

42-361 Marriage irretrievably broken; findings; decree issued without hearing; when.

(1) If both of the parties state under oath or affirmation that the marriage is irretrievably broken, or one of the parties so states and the other does not deny it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

(3) Sixty days or more after perfection of service of process, the court may enter a decree of dissolution without a hearing if:

(a) Both parties waive the requirement of the hearing and the court has sufficient basis to make a finding that it has subject matter jurisdiction over the dissolution action and personal jurisdiction over both parties; and

(b) Both parties have certified in writing that the marriage is irretrievably broken, both parties have certified that they have made every reasonable effort to effect reconciliation, all documents required by the court and by statute have been filed, and the parties have entered into a written agreement, signed by both parties under oath, resolving all issues presented by the pleadings in their dissolution action.

Source: Laws 1972, LB 820, § 15; Laws 2004, LB 1207, § 24; Laws 2011, LB669, § 25.

42-361.01 Legal separation; findings.

In a legal separation proceeding:

(1) If both of the parties state under oath or affirmation that they shall thereafter live separate and apart, or one of the parties so states and the other does not deny it, the court, after hearing, shall make a finding whether the legal separation should be granted and if so may enter a decree of legal separation;

(2) If one of the parties has denied under oath or affirmation that they will thereafter live separate and apart, the court shall, after hearing, consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall make a finding whether the legal separation should be granted and if so may enter a decree of legal separation; or

(3) Sixty days or more after perfection of service of process, the court may enter a decree of legal separation without a hearing if:

(a) Both parties waive the requirement of the hearing and the court has sufficient basis to make a finding that it has subject matter jurisdiction over the legal separation proceeding and personal jurisdiction over both parties; and

(b) Both parties have certified in writing that they shall thereafter live separate and apart, both parties have certified that they have made every reasonable effort to effect reconciliation, all documents required by the court and by statute have been filed, and the parties have entered into a written agreement, signed by both parties under oath, resolving all issues presented by the pleadings in their legal separation proceeding.

Source: Laws 2012, LB899, § 2.

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1)(a) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (i) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (ii) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

(b) The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act.

(c) The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having physical custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall conduct the termination of parental rights proceeding as provided in the Nebraska Juvenile Code.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the

purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5; Laws 2010, LB901, § 1; Laws 2013, LB561, § 5.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

Parenting Act, see section 43-2920.

Violation of custody, penalty, see section 28-316.

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2)(a) If the party against whom an order, decree, or judgment for child support is entered or the custodial party has health insurance available to him or her through an employer, organization, or other health insurance entity which may extend to cover any children affected by the order, decree, or judgment and the health care coverage is accessible to the children and is available to the responsible party at reasonable cost, the court shall require health care coverage to be provided. Health care coverage is accessible if the covered children can obtain services from a plan provider with reasonable effort by the custodial party. When the administrative agency, court, or other tribunal determines that the only health care coverage option available through

the noncustodial party is a plan that limits service coverage to providers within a defined geographic area, the administrative agency, court, or other tribunal shall determine whether the child lives within the plan's service area. If the child does not live within the plan's service area, the administrative agency, court, or other tribunal shall determine whether the plan has a reciprocal agreement that permits the child to receive coverage at no greater cost than if the child resided in the plan's service area. The administrative agency, court, or other tribunal shall also determine if primary care is available within thirty minutes or thirty miles of the child's residence. For the purpose of determining the accessibility of health care coverage, the administrative agency, court, or other tribunal may determine and include in an order that longer travel times are permissible if residents, in part or all of the service area, customarily travel distances farther than thirty minutes or thirty miles. If primary care services are not available within these constraints, the health care coverage is presumed inaccessible. If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed three percent of his or her gross income. In applying the three-percent standard, the cost is the cost of adding the children to existing health care coverage or the difference between self-only and family health care coverage. Cash medical support payments shall not be ordered if, at the time that the order is issued or modified, the responsible party's income is or such expense would reduce the responsible party's net income below the basic subsistence limitation provided in Nebraska Court Rule section 4-218. If such rule does not describe a basic subsistence limitation, the responsible party's net income shall not be reduced below nine hundred three dollars net monthly income for one person or below the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(b) For purposes of this section:

(i) Health care coverage has the same meaning as in section 44-3,144; and

(ii) Cash medical support means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance.

(3) A support order, decree, or judgment may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each

child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35; Laws 2009, LB288, § 6.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-371 Judgments and orders; liens; release; subordination; procedure; time limitation on lien; security; attachment; priority.

Under the Uniform Interstate Family Support Act and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and 43-1401 to 43-1418:

(1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments;

(2) The judgment creditor may execute a partial or total release of the judgment or a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property.

Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support may, if all such payments are current and not delinquent or in arrears, be released or subordinated by a release or subordination document executed by the judgment creditor, and such document shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document explicitly reciting that all child support payments or spousal support payments are current is prima facie evidence that such payments are in fact current. For purposes of this section, any delinquency or arrearage of support payments shall be determined as provided in subsection (2) of section 42-358.02;

(3) If a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in subdivision (2) of this section or the support payments are not current, the person desiring such release or subordination may file an application for the relief desired in the court which rendered the original judgment. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no later than ten days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the judgment lien or issue an order subordinating the judgment lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment. If the court orders a release or subordination, the court may order a judgment creditor who, without a good faith reason, refused to execute a release or subordination to pay the judgment debtor's court costs and attorney's fees involved with the application brought under this subdivision. A showing that all support payments are current shall be evidence that the judgment creditor did not have a good faith reason to refuse to execute such release or subordination. For purposes of this section, a current certified copy of support order payment history from the Title IV-D Division of the Department of Health and Human

Services setting forth evidence that all support payments are current is prima facie evidence that such payments are in fact current and is valid for thirty days after the date of certification;

(4) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts overdue relating to a support order owed by a judgment debtor or obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this state. The filing process required by this section shall not be construed as requiring an application, complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

(5) Support order judgments shall cease to be liens on real or registered personal property ten years from the date (a) the youngest child becomes of age or dies or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated;

(6) Alimony and property settlement award judgments, if not covered by subdivision (5) of this section, shall cease to be a lien on real or registered personal property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated;

(7) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments to post sufficient security, bond, or other guarantee with the clerk to insure payment of both current and any delinquent amounts. Upon failure to comply with the order, the court may also appoint a receiver to take charge of the debtor's property to insure payment. Any bond, security, or other guarantee paid in cash may, when the court deems it appropriate, be applied either to current payments or to reduce any accumulated arrearage;

(8)(a) The lien of a mortgage or deed of trust which secures a loan, the proceeds of which are used to purchase real property, and (b) any lien given priority pursuant to a subordination document under this section shall attach prior to any lien authorized by this section. Any mortgage or deed of trust which secures the refinancing, renewal, or extension of a real property purchase money mortgage or deed of trust shall have the same lien priority with respect to any lien authorized by this section as the original real property purchase money mortgage or deed of trust to the extent that the amount of the loan refinanced, renewed, or extended does not exceed the amount used to pay the principal and interest on the existing real property purchase money mort-

gage or deed of trust, plus the costs of the refinancing, renewal, or extension; and

(9) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-164 or a subordination document executed under this section.

Source: Laws 1972, LB 820, § 25; Laws 1975, LB 212, § 2; Laws 1980, LB 622, § 3; Laws 1985, Second Spec. Sess., LB 7, § 19; Laws 1986, LB 600, § 9; Laws 1991, LB 715, § 3; Laws 1993, LB 500, § 52; Laws 1993, LB 523, § 3; Laws 1994, LB 1224, § 47; Laws 1997, LB 229, § 19; Laws 1999, LB 594, § 7; Laws 2004, LB 1207, § 29; Laws 2005, LB 276, § 100; Laws 2007, LB554, § 36; Laws 2008, LB1014, § 35; Laws 2011, LB673, § 1.

Cross References

Nebraska Uniform Enforcement of Foreign Judgments Act, see section 25-1587.01.
Uniform Interstate Family Support Act, see section 42-701.

42-374 Annulment; conditions.

A marriage may be annulled for any of the following causes:

- (1) The marriage between the parties is prohibited by law;
- (2) Either party is impotent at the time of marriage;
- (3) Either party had a spouse living at the time of marriage; or
- (4) Force or fraud.

Source: Laws 1972, LB 820, § 28; Laws 1989, LB 23, § 2; Laws 2013, LB23, § 9.

Cross References

Marriages:

When void, see section 42-103.
When voidable, see section 42-118.

**ARTICLE 9
DOMESTIC VIOLENCE**

(a) PROTECTION FROM DOMESTIC ABUSE ACT

Section

- 42-903. Terms, defined.
42-917. Delivery of services; cooperation; coordination of programs.
42-924. Protection order; when authorized; term; violation; penalty; construction of sections.
42-925. Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.
42-926. Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.
42-930. Law enforcement agency; Nebraska Commission on Law Enforcement and Criminal Justice; duties.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-903 Terms, defined.

For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

(1) Abuse means the occurrence of one or more of the following acts between household members:

(a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct that is made by a person with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or

(c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318;

(2) Department means the Department of Health and Human Services;

(3) Family or household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context; and

(4) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol.

Source: Laws 1978, LB 623, § 3; Laws 1986, LB 448, § 1; Laws 1989, LB 330, § 5; Laws 1992, LB 1098, § 6; Laws 1993, LB 299, § 4; Laws 1996, LB 1044, § 103; Laws 1998, LB 218, § 18; Laws 2004, LB 613, § 12; Laws 2012, LB310, § 2.

42-917 Delivery of services; cooperation; coordination of programs.

The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the State Department of Education, the Department of Health and Human Services, and other appropriate agencies, community service agencies, and private sources.

Source: Laws 1978, LB 623, § 17; Laws 1980, LB 684, § 17; Laws 1995, LB 275, § 2; Laws 1996, LB 1044, § 104; Laws 2004, LB 1083, § 90; Laws 2007, LB296, § 61; Laws 2009, LB154, § 8.

42-924 Protection order; when authorized; term; violation; penalty; construction of sections.

(1) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in subsection (2) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a protection order without bond granting the following relief:

(a) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(b) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(c) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(d) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(e) Ordering the respondent to stay away from any place specified by the court;

(f) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;

(g) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or

(h) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(2) Petitions for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(3) A petition filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(4) Any person who knowingly violates a protection order issued pursuant to subsection (1) of this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class IV felony.

(5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

Source: Laws 1978, LB 623, § 24; Laws 1984, LB 276, § 3; Laws 1989, LB 330, § 7; Laws 1992, LB 1098, § 7; Laws 1993, LB 299, § 5; Laws 1997, LB 229, § 34; Laws 1998, LB 218, § 20; Laws 2002, LB 82, § 17; Laws 2012, LB310, § 3.

42-925 Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.

(1) An order issued under subsection (1) of section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before

the matter can be heard on notice. If an order is issued ex parte, such order is a temporary order and the court shall forthwith cause notice of the petition and order to be given to the respondent. The court shall also cause a form to request a show-cause hearing to be served upon the respondent. If the respondent wishes to appear and show cause why the order should not remain in effect, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the request of the petitioner, or upon the court's own motion, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the temporary order. If the respondent does not so appear and show cause, the temporary order shall be affirmed and shall be deemed the final protection order. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be affirmed and the service of the ex parte order shall be notice of the final protection order for purposes of prosecution under subsection (4) of section 42-924.

(2) If an order under subsection (1) of section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue a final protection order.

(3) The court may by rule or order refer or assign all matters regarding orders issued under subsection (1) of section 42-924 to a referee for findings and recommendations.

(4) An order issued under subsection (1) of section 42-924 shall remain in effect for a period of one year from the date of issuance, unless dismissed or modified by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(5) The court shall also cause the notice created under section 29-2291 to be served upon the respondent notifying the respondent that it may be unlawful under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.

Source: Laws 1978, LB 623, § 25; Laws 1989, LB 330, § 8; Laws 1998, LB 218, § 23; Laws 2008, LB1014, § 36; Laws 2012, LB310, § 4.

42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.

(1) Upon the issuance of a temporary or final protection order under section 42-925, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the protection order to the sheriff's office in the

county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the protection order upon the respondent and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection order. If any protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification. If the respondent has notice as described in subsection (2) of this section, further service under this subsection is unnecessary.

(2) If the respondent was present at a hearing convened pursuant to section 42-925 and the protection order was not dismissed, the respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of notice described in subsection (1) of this section is not required for purposes of prosecution under subsection (4) of section 42-924.

Source: Laws 1978, LB 623, § 26; Laws 1989, LB 330, § 9; Laws 1998, LB 218, § 24; Laws 2012, LB310, § 5.

42-930 Law enforcement agency; Nebraska Commission on Law Enforcement and Criminal Justice; duties.

(1) By January 1, 1998, each law enforcement agency shall develop a system for recording incidents of domestic abuse within its jurisdiction. All incidents of domestic abuse, whether or not an arrest was made, shall be documented with a written incident report form that includes a domestic abuse identifier.

(2) By January 1, 1998, the Nebraska Commission on Law Enforcement and Criminal Justice shall develop or shall approve a monthly reporting process. Each law enforcement agency shall compile and submit a monthly report to the commission on the number of domestic abuse incidents recorded within its jurisdiction.

(3) The commission shall submit a report annually to the Governor, the Legislature, and the public indicating the total number of incidents of domestic abuse reported by each reporting agency. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 1997, LB 829, § 10; Laws 2012, LB782, § 43.

ARTICLE 11

SPOUSAL PENSION RIGHTS ACT

Section
42-1102. Terms, defined.

42-1102 Terms, defined.

For purposes of the Spousal Pension Rights Act:

(1) Alternate payee means a spouse, former spouse, child, or other dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a statewide public retirement system with respect to such member;

(2) Benefit means an annuity, a pension, a retirement allowance, a withdrawal of accumulated contributions, or an optional benefit accrued or accruing to a member under a statewide public retirement system;

(3) Domestic relations order means a judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, maintenance support, or marital property rights to a spouse, former spouse, child, or other dependent of a member and is made pursuant to a state domestic relations law of this state or another state;

(4) Earliest retirement date means the earlier of (a) the date on which the member is entitled to a distribution under the system or (b) the later of (i) the date that the member attains fifty years of age or (ii) the earliest date that the member could receive benefits under the system if the member separated from service;

(5) Qualified domestic relations order means a domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a member under a statewide public retirement system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of section 42-1103;

(6) Segregated amounts means the amounts which would have been payable to the alternative payee during the period of time that the qualified status of an order is being determined. Such amounts shall equal the amounts payable for such period if the order had been determined to be a qualified domestic relations order; and

(7) Statewide public retirement system means the Retirement System for Nebraska Counties, the Nebraska Judges Retirement System as provided in the Judges Retirement Act, the School Employees Retirement System of the State of Nebraska, the Nebraska State Patrol Retirement System, and the State Employees Retirement System of the State of Nebraska.

Source: Laws 1996, LB 1273, § 2; Laws 2004, LB 1097, § 21; Laws 2011, LB509, § 12.

Cross References

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement System, see section 81-2015.

Retirement System for Nebraska Counties, see section 23-2302.

School Employees Retirement System of the State of Nebraska, see section 79-903.

State Employees Retirement System of the State of Nebraska, see section 84-1302.



CHAPTER 43

INFANTS AND JUVENILES

Article.

1. Adoption Procedures.
 - (a) General Provisions. 43-103 to 43-109.
 - (b) Wards and Children with Special Needs. 43-117 to 43-118.02.
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ARTICLE 1
ADOPTION PROCEDURES

(a) GENERAL PROVISIONS

Section

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(d) ADOPTION AND MEDICAL ASSISTANCE

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(a) GENERAL PROVISIONS

43-103 Petition; hearing; notice.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, upon the filing of a petition for adoption the court shall fix a time for hearing the same. The hearing shall be held not less than four weeks nor more than eight weeks after the filing of such petition unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance. The court may require notice of the hearing to be given to the child, if over fourteen years of age, to the natural parent or parents of the child, and to such other interested persons as the judge may, in the exercise of discretion, deem advisable, in the manner provided for service of a summons in a civil action. If the judge directs notice by publication, such notice shall be published three successive weeks in a legal newspaper of general circulation in such county.

Source: Laws 1943, c. 104, § 3, p. 349; R.S.1943, § 43-103; Laws 1983, LB 447, § 50; Laws 1985, LB 255, § 19; Laws 2009, LB35, § 27.

Cross References

Juveniles in need of assistance under Nebraska Juvenile Code, notice requirements, see section 43-297.
 Nebraska Indian Child Welfare Act, see section 43-1501.

43-104.02 Child born out of wedlock; Notice of Objection to Adoption and Intent to Obtain Custody; filing requirements.

A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services (1) at any time during the pregnancy and no later than five business days after the birth of the child or (2) if the notice required by section 43-104.13 is provided after the birth of the child (a) at any time during the pregnancy and no later than five business days

after receipt of the notice provided under section 43-104.12 or (b) no later than five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier. Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section.

Source: Laws 1975, LB 224, § 3; Laws 1995, LB 712, § 22; Laws 1996, LB 1044, § 106; Laws 1997, LB 752, § 97; Laws 2007, LB247, § 7; Laws 2007, LB296, § 64; Laws 2014, LB908, § 2.
Effective date July 18, 2014.

43-107 Investigation by Department of Health and Human Services; adoptive home studies required; when; medical history; required; contents; exceptions; report required; case file; access; department; duties.

(1)(a) For adoption placements occurring or in effect prior to January 1, 1994, upon the filing of a petition for adoption, the county judge shall, except in the adoption of children by stepparents when the requirement of an investigation is discretionary, request the Department of Health and Human Services or any child placement agency licensed by the department to examine the allegations set forth in the petition and to ascertain any other facts relating to such minor child and the person or persons petitioning to adopt such child as may be relevant to the propriety of such adoption, except that the county judge shall not be required to request such an examination if the judge determines that information compiled in a previous examination or study is sufficiently current and comprehensive. Upon the request being made, the department or other licensed agency shall conduct an investigation and report its findings to the county judge in writing at least one week prior to the date set for hearing.

(b)(i) For adoption placements occurring on or after January 1, 1994, a preplacement adoptive home study shall be filed with the court prior to the hearing required in section 43-103, which study is completed by the Department of Health and Human Services or a licensed child placement agency within one year before the date on which the adoptee is placed with the petitioner or petitioners and indicates that the placement of a child for the purpose of adoption would be safe and appropriate.

(ii) An adoptive home study shall not be required when the petitioner is a stepparent of the adoptee unless required by the court, except that for petitions filed on or after January 1, 1994, the judge shall order the petitioner or his or her attorney to request the Nebraska State Patrol to file a national criminal history record information check by submitting the request accompanied by two sets of fingerprint cards or an equivalent electronic submission and the appropriate fee to the Nebraska State Patrol for a Federal Bureau of Investigation background check and to request the department to conduct and file a check of the central registry created in section 28-718 for any history of the petitioner of behavior injurious to or which may endanger the health or morals of a child. An adoption decree shall not be issued until such records are on file with the court. The petitioner shall pay the cost of the national criminal history record information check and the check of the central registry.

(iii) The placement of a child for foster care made by or facilitated by the department or a licensed child placement agency in the home of a person who later petitions the court to adopt the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners

who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(iv) A voluntary placement for purposes other than adoption made by a parent or guardian of a child without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(v) The adoption of an adult child as provided in subsection (2) of section 43-101 shall be exempt from the requirements of an adoptive home study unless the court specifically orders otherwise. The court may order an adoptive home study, a background investigation, or both if the court determines that such would be in the best interests of the adoptive party or the person to be adopted.

(vi) Any adoptive home study required by this section shall be conducted by the department or a licensed child placement agency at the expense of the petitioner or petitioners unless such expenses are waived by the department or licensed child placement agency. The department or licensed agency shall determine the fee or rate for the adoptive home study.

(vii) The preplacement or postplacement adoptive home study shall be performed as prescribed in rules and regulations of the department and shall include at a minimum an examination into the facts relating to the petitioner or petitioners as may be relevant to the propriety of such adoption. Such rules and regulations shall require an adoptive home study to include a national criminal history record information check and a check of the central registry created in section 28-718 for any history of the petitioner or petitioners of behavior injurious to or which may endanger the health or morals of a child.

(2) Upon the filing of a petition for adoption, the judge shall require that a complete medical history be provided on the child, except that in the adoption of a child by a stepparent the provision of a medical history shall be discretionary. On and after August 27, 2011, the complete medical history or histories required under this subsection shall include the race, ethnicity, nationality, Indian tribe when applicable and in compliance with the Nebraska Indian Child Welfare Act, or other cultural history of both biological parents, if available. A medical history shall be provided, if available, on the biological mother and father and their biological families, including, but not limited to, siblings, parents, grandparents, aunts, and uncles, unless the child is foreign born or was abandoned. The medical history or histories shall be reported on a form provided by the department and filed along with the report of adoption as provided by section 71-626. If the medical history or histories do not accompany the report of adoption, the department shall inform the court and the State Court Administrator. The medical history or histories shall be made part of the court record. After the entry of a decree of adoption, the court shall retain a copy and forward the original medical history or histories to the department. This subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

(3) After the filing of a petition for adoption and before the entry of a decree of adoption for a child who is committed to the Department of Health and

Human Services, the person or persons petitioning to adopt the child shall be given the opportunity to read the case file on the child maintained by the department or its duly authorized agent. The department shall not include in the case file to be read any information or documents that the department determines cannot be released based upon state statute, federal statute, federal rule, or federal regulation. The department shall provide a document for such person's or persons' signatures verifying that he, she, or they have been given an opportunity to read the case file and are aware that he, she, or they can review the child's file at any time following finalization of the adoption upon making a written request to the department. The department shall file such document with the court prior to the entry of a decree of adoption in the case.

Source: Laws 1943, c. 104, § 5, p. 351; R.S.1943, § 43-107; Laws 1978, LB 566, § 1; Laws 1980, LB 681, § 1; Laws 1988, LB 372, § 1; Laws 1988, LB 301, § 7; Laws 1989, LB 231, § 1; Laws 1993, LB 16, § 2; Laws 1996, LB 1044, § 113; Laws 1997, LB 307, § 21; Laws 1998, LB 1041, § 10; Laws 1999, LB 594, § 18; Laws 2004, LB 1005, § 4; Laws 2007, LB296, § 67; Laws 2011, LB94, § 1; Laws 2011, LB124, § 1; Laws 2012, LB737, § 1; Laws 2012, LB768, § 1; Laws 2014, LB853, § 19.
Effective date July 18, 2014.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-109 Decree; conditions; content.

(1) If, upon the hearing, the court finds that such adoption is for the best interests of such minor child or such adult child, a decree of adoption shall be entered. No decree of adoption shall be entered unless (a) it appears that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child, (b) the medical histories required by subsection (2) of section 43-107 have been made a part of the court record, (c) the court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 43-106.02, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were, (i) presented a copy or copies of the nonconsent form provided for in section 43-146.06 and (ii) given an explanation of the effects of filing or not filing the nonconsent form, and (d) if the child to be adopted is committed to the Department of Health and Human Services, the document required by subsection (3) of section 43-107 is a part of the court record. Subdivisions (b) and (c) of this subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

(2) If the adopted child was born out of wedlock, that fact shall not appear in the decree of adoption.

(3) The court may decree such change of name for the adopted child as the petitioner or petitioners may request.

Source: Laws 1943, c. 104, § 7, p. 351; R.S.1943, § 43-109; Laws 1984, LB 510, § 4; Laws 1985, LB 255, § 22; Laws 1988, LB 372, § 2; Laws 1988, LB 301, § 8; Laws 1989, LB 231, § 2; Laws 1999, LB 594, § 19; Laws 2011, LB94, § 2; Laws 2012, LB768, § 2.

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-117 Adoptive parents; assistance; medical assessment of child.

(1) The Department of Health and Human Services may make payments as needed, after the legal completion of an adoption, on behalf of a child who immediately preceding the adoption was (a) a ward of the department with special needs or (b) the subject of a state-subsidized guardianship. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's twentieth birthday.

(2) The Department of Health and Human Services shall pay the treatment costs for the care of an adopted minor child which are the result of an illness or condition if within three years after the decree of adoption is entered the child is diagnosed as having a physical or mental illness or condition which predates the adoption and the child was adopted through the department, the department did not inform the adopting parents of such condition prior to the adoption, and the condition is of such nature as to require medical, psychological, or psychiatric treatment and is more extensive than ordinary childhood illness.

(3) The Department of Health and Human Services shall conduct a medical assessment of the mental and physical needs of any child to be adopted through the department.

Source: Laws 1971, LB 425, § 1; Laws 1996, LB 1044, § 114; Laws 1997, LB 788, § 1; Laws 2009, LB91, § 1.

43-117.03 Adoption assistance payments; cease; when; exceptions.

Payment of adoption assistance provided for by section 43-117 ceases upon the death of the adoptive parent or parents except (1) in cases in which the adoption assistance agreement provides for assignment to a guardian or conservator or (2) for up to six months pending the appointment of a guardian or conservator if the child is placed in the temporary custody of a family member or other individual.

Payment of adoption assistance provided by section 43-117 ceases upon placement of the child with the Department of Health and Human Services or a child placement agency.

Source: Laws 2012, LB1062, § 2.

43-118 Assistance; conditions.

All actions of the Department of Health and Human Services under the programs authorized by sections 43-117 to 43-117.03 and 43-118.02 shall be subject to the following criteria:

(1) The child so adopted shall have been a child for whom adoption would not have been possible without the financial aid provided for by sections 43-117 to 43-117.03 and 43-118.02; and

(2) The department shall adopt and promulgate rules and regulations for the administration of sections 43-117 to 43-118 and 43-118.02.

Source: Laws 1971, LB 425, § 2; Laws 1990, LB 1070, § 3; Laws 1996, LB 1044, § 117; Laws 2007, LB296, § 68; Laws 2012, LB1062, § 3.

43-118.02 Written adoption assistance agreement; required; contents.

Before a final decree of adoption is issued, the Department of Health and Human Services and the adoptive parent or parents shall enter into a written adoption assistance agreement stating the terms of assistance as provided for by sections 43-117 to 43-118 if the child is eligible for such assistance and designating a guardian for the child in case of the death of the adoptive parent or parents.

Source: Laws 2012, LB1062, § 1.

(c) RELEASE OF INFORMATION**43-123.01 Medical history, defined.**

Medical history shall mean medical history as defined by the department in its rules and regulations and shall include the race, ethnicity, nationality, Indian tribe when applicable and in compliance with the Nebraska Indian Child Welfare Act, or other cultural history of both biological parents, if available.

Source: Laws 1988, LB 372, § 22; Laws 1996, LB 1044, § 120; Laws 2007, LB296, § 71; Laws 2011, LB124, § 2.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-146.01 Sections; applicability.

(1) Sections 43-106.02, 43-121, 43-123.01, and 43-146.02 to 43-146.16 shall provide the procedures for gaining access to information concerning an adopted person when a relinquishment or consent for an adoption is given on or after September 1, 1988.

(2) Sections 43-119 to 43-142 shall remain in effect for a relinquishment or consent for an adoption which is given prior to September 1, 1988.

(3) Except as otherwise provided in subsection (2) of section 43-107, subdivisions (1)(b), (1)(c), and (1)(d) of section 43-109, and subsection (4) of this section: Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

(4) Sections 43-143 to 43-146 shall not apply to adopted persons for whom a relinquishment or consent for adoption was given on and after July 20, 2002.

Source: Laws 1988, LB 372, § 6; Laws 1988, LB 301, § 9; Laws 2002, LB 952, § 4; Laws 2011, LB94, § 3; Laws 2012, LB768, § 3.

43-146.17 Heir of adopted person; access to information; when; fee.

(1) Notwithstanding sections 43-119 to 43-146.16 and except as otherwise provided in this section, an heir twenty-one years of age or older of an adopted person shall have access to all information on file at the Department of Health and Human Services related to such adopted person, including information contained in the original birth certificate of the adopted person, if: (a)(i) The adopted person is deceased, (ii) both biological parents of the adopted person are deceased or, if only one biological parent is known, such parent is deceased, and (iii) each spouse of the biological parent or parents of the

adopted person, if any, is deceased, if such spouse is not a biological parent; or (b) at least one hundred years has passed since the birth of the adopted person.

(2) The following information relating to an adopted person shall not be released to the heir of such person under this section: (a) Tests conducted for the human immunodeficiency virus or acquired immunodeficiency syndrome; (b) the revocation of a license to practice medicine in the State of Nebraska; (c) child protective services reports or records; (d) adult protective services reports or records; (e) information from the central registry of child protection cases and the Adult Protective Services Central Registry; or (f) law enforcement investigative reports.

(3) The department shall provide a form that an heir of an adopted person may use to request information under this section. The department may charge a reasonable fee in an amount established by rules and regulations of the department to recover expenses incurred by the department in carrying out this section. Such fee may be waived if the requesting party shows that the fee would work an undue financial hardship on the party. When any information is provided to an heir of an adopted person under this section, the disclosure of such information shall be recorded in the records of the adopted person, including the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

(4) For purposes of this section, an heir of an adopted person means a direct biological descendent of such adopted person.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2002, LB 952, § 1; Laws 2005, LB 61, § 1; Laws 2007, LB296, § 106; Laws 2014, LB853, § 20.
Effective date July 18, 2014.

(d) ADOPTION AND MEDICAL ASSISTANCE

43-147 Legislative findings.

The Legislature finds that:

(1) Finding adoptive families for children for whom state assistance is provided pursuant to sections 43-117 to 43-118 and 43-118.02 and assuring the protection of the interests of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Providing medical and other necessary services for children, with state assistance, is more difficult when the services are provided in other states.

Source: Laws 1985, LB 447, § 1; Laws 2012, LB1062, § 4.

ARTICLE 2 JUVENILE CODE

(b) GENERAL PROVISIONS

| | |
|------------|--|
| Section | |
| 43-245. | Terms, defined. |
| 43-246. | Code, how construed. |
| 43-246.01. | Juvenile court; exclusive original and concurrent original jurisdiction. |
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JUVENILE CODE

Section

- 43-247.01. Transferred to section 43-247.03.
- 43-247.02. Juvenile court; placement or commitment of juveniles; Department of Health and Human Services; Office of Juvenile Services; authority and duties.
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(c) LAW ENFORCEMENT PROCEDURES

- 43-248. Temporary custody of juvenile without warrant; when.
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(f) ADJUDICATION PROCEDURES

- 43-278. Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic or videoconference hearing; authorized.
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(g) DISPOSITION

- 43-283.01. Preserve and reunify the family; reasonable efforts; requirements.
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- 43-284.02. Ward of the department; appointment of guardian; payments allowed.

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- 43-285. Care of juvenile; duties; authority; placement plan and report; when; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.
- 43-286. Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.
- 43-286.01. Juveniles; substance abuse or noncriminal violations of probation; administrative sanctions; probation officer; duties; powers; county attorney; file action to revoke probation; when.
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- 43-287.01. Repealed. Laws 2010, LB 800, § 40.
- 43-287.02. Repealed. Laws 2010, LB 800, § 40.
- 43-287.03. Repealed. Laws 2010, LB 800, § 40.
- 43-287.04. Repealed. Laws 2010, LB 800, § 40.
- 43-287.05. Repealed. Laws 2010, LB 800, § 40.
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- 43-289. Juvenile committed; release from confinement upon reaching age of majority; hospital treatment; custody in state institutions; discharge.
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- 43-290.01. Costs; payment.
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- 43-296. Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.
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(h) POSTDISPOSITIONAL PROCEDURES

- 43-2,102. Repealed. Laws 2010, LB 800, § 40.
- 43-2,103. Repealed. Laws 2010, LB 800, § 40.
- 43-2,104. Repealed. Laws 2010, LB 800, § 40.
- 43-2,105. Repealed. Laws 2010, LB 800, § 40.
- 43-2,106.01. Judgments or final orders; appeal; parties; cost.
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(i) MISCELLANEOUS PROVISIONS

- 43-2,108. Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exception.
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- 43-2,108.04. Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.
- 43-2,108.05. Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(k) CITATION AND CONSTRUCTION OF CODE

- 43-2,129. Code, how cited.

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and

maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(4) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(5) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(6) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(7) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(8) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(9) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(10) Juvenile means any person under the age of eighteen;

(11) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(12) Juvenile detention facility has the same meaning as in section 83-4,125;

(13) Legal custody has the same meaning as in section 43-2922;

(14) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

(15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(17) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

(18) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(19) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(20) Physical custody has the same meaning as in section 43-2922;

(21) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(22) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(23) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(24) Staff secure juvenile facility has the same meaning as in section 83-4,125;

(25) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and

(26) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6; Laws 2014, LB464, § 7; Laws 2014, LB908, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB464, section 7, with LB908, section 3, to reflect all amendments.

Note: Changes made by LB908 became effective July 18, 2014. Changes made by LB464 became operative July 18, 2014.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246 Code, how construed.

Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims through juvenile offender and victim mediation and fulfilling the terms of the resulting agreement which may require restitution and community service;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

(8) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act; and

(9) To make any temporary placement of a juvenile in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 2; Laws 1982, LB 787, § 1; Laws 1985, LB 255, § 31; Laws 1985, LB 447, § 12; Laws 1996, LB 1001, § 2; Laws 1998, LB 1041, § 21; Laws 1998, LB 1073, § 12; Laws 2010, LB800, § 13.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246.01 Juvenile court; exclusive original and concurrent original jurisdiction.

The juvenile court shall have:

(1) Exclusive original jurisdiction as to:

(a) Any juvenile described in subdivision (3) of section 43-247;

(b) Any juvenile who was under sixteen years of age at the time the alleged offense was committed and the offense falls under subdivision (1) of section 43-247;

(c) A party or proceeding described in subdivision (5) or (7) of section 43-247; and

(d) Any juvenile who was under fourteen years of age at the time the alleged offense was committed and the offense falls under subdivision (2) of section 43-247;

(2) Exclusive original jurisdiction as to:

(a) Beginning January 1, 2015, any juvenile who is alleged to have committed an offense under subdivision (1) of section 43-247 and who was sixteen years of age at the time the alleged offense was committed, and beginning January 1, 2017, any juvenile who is alleged to have committed an offense under subdivision (1) of section 43-247 and who was sixteen years of age or seventeen years of age at the time the alleged offense was committed; and

(b) Any juvenile who was fourteen years of age or older at the time the alleged offense was committed and the offense falls under subdivision (2) of section 43-247 except offenses enumerated in subdivision (1)(a)(ii) of section 29-1816.

Proceedings initiated under this subdivision (2) may be transferred as provided in section 43-274; and

(3) Concurrent original jurisdiction with the county court or district court as to:

(a) Any juvenile described in subdivision (4) of section 43-247;

(b) Any proceeding under subdivision (6), (8), (9), or (10) of section 43-247; and

(c) Any juvenile described in subdivision (1)(a)(ii) of section 29-1816.

Proceedings initiated under this subdivision (3) may be transferred as provided in section 43-274.

Source: Laws 2014, LB464, § 9.

Operative date January 1, 2015.

43-247 Juvenile court; jurisdiction.

The juvenile court in each county shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian of any juvenile described in this section;

(6) The proceedings for termination of parental rights;

(7) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(8) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;

(9) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code;

(10) The paternity or custody determination for a child over which the juvenile court already has jurisdiction; and

(11) The proceedings under the Young Adult Bridge to Independence Act.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

Source: Laws 1981, LB 346, § 3; Laws 1982, LB 215, § 2; Laws 1982, LB 787, § 2; Laws 1984, LB 13, § 77; Laws 1985, LB 255, § 32; Laws 1985, LB 447, § 13; Laws 1996, LB 1044, § 127; Laws 1997, LB 307, § 58; Laws 1997, LB 622, § 63; Laws 1998, LB 1041, § 22; Laws 2001, LB 23, § 1; Laws 2004, LB 1083, § 92; Laws 2006, LB 1115, § 31; Laws 2008, LB280, § 3; Laws 2008, LB1014, § 37; Laws 2013, LB255, § 9; Laws 2013, LB561, § 7; Laws 2014, LB464, § 8; Laws 2014, LB853, § 21.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB464, section 8, with LB853, section 21, to reflect all amendments.

Note: Changes made by LB853 became effective July 18, 2014. Changes made by LB464 became operative January 1, 2015.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

Paternity determinations, jurisdiction, see section 25-2740.

Young Adult Bridge to Independence Act, see section 43-4501.

43-247.01 Transferred to section 43-247.03.

43-247.02 Juvenile court; placement or commitment of juveniles; Department of Health and Human Services; Office of Juvenile Services; authority and duties.

(1) Notwithstanding any other provision of Nebraska law, on and after October 1, 2013, a juvenile court shall not:

(a) Place any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 with the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(b) Commit any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and custody of the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(c) Require the Department of Health and Human Services or the Office of Juvenile Services to supervise any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, other than as allowed under subsection (2) or (3) of this section; or

(d) Require the Department of Health and Human Services or the Office of Juvenile Services to provide, arrange for, or pay for any services for any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party to cases under those subdivisions, other than as allowed under subsection (2) or (3) of this section.

(2) Notwithstanding any other provision of Nebraska law, on and after July 1, 2013, a juvenile court shall not commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center except as part of an order of intensive supervised probation under subdivision (1)(b)(ii) of section 43-286.

(3) Nothing in this section shall be construed to limit the authority or duties of the Department of Health and Human Services in relation to juveniles adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 who were committed to the care and custody of the Department of Health and Human Services prior to October 1, 2013, to the Office of Juvenile Services for community-based services prior to October 1, 2013, or to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. The care and custody of such juveniles with the Department of Health and Human Services or the Office of Juvenile Services shall continue in accordance with the Nebraska Juvenile Code and the Juvenile Services Act as such acts existed on January 1, 2013, until:

(a) The juvenile reaches the age of majority;

(b) The juvenile is no longer under the care and custody of the department pursuant to a court order or for any other reason, a guardian other than the department is appointed for the juvenile, or the juvenile is adopted;

(c) The juvenile is discharged pursuant to section 43-412, as such section existed on January 1, 2013; or

(d) A juvenile court terminates its jurisdiction of the juvenile.

Source: Laws 2013, LB561, § 8.

Cross References

Juvenile Services Act, see section 43-2401.

43-247.03 Facilitated conferencing or mediation; confidential; privileged communications.

(1) In any juvenile case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, restorative justice, and other concerns through facilitated conferencing or mediation. Facilitated conferencing may include, but is not limited to, prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, and juvenile victim-offender dialogue. Funding and management for such services will be part of the office of the State Court Administrator. All discussions taking place during such facilitated conferences, including plea negotiations, shall be considered confidential and privileged communications, except communications required by mandatory

reporting under section 28-711 for new allegations of child abuse or neglect which were not previously known or reported.

(2) For purposes of this section:

(a) Expedited family group conference means an expedited and limited-scope facilitated planning meeting which engages a child's or juvenile's parents, the child or juvenile when appropriate, other critical family members, services providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to address immediate placement issues for the child or juvenile;

(b) Family group conference means a facilitated meeting involving a child's or juvenile's family, the child or juvenile when appropriate, available extended family members from across the United States, other significant and close persons to the family, service providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to develop a family-centered plan for the best interests of the child and to address the essential issues of safety, permanency, and well-being of the child;

(c) Juvenile victim-offender dialogue means a court-connected process in which a facilitator meets with the juvenile offender and the victim in an effort to convene a dialogue in which the offender takes responsibility for his or her actions and the victim is able to address the offender and request an apology and restitution, with the goal of creating an agreed-upon written plan; and

(d) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system. A prehearing conference may be scheduled at any time during the child welfare or juvenile court process, from initial removal through permanency, termination of parental rights, and juvenile delinquency court processes.

Source: Laws 2008, LB1014, § 38; R.S.1943, (2008), § 43-247.01; Laws 2014, LB464, § 10.

Operative date July 18, 2014.

43-247.04 Legislative intent; State Court Administrator; duties; Department of Health and Human Services; duties.

(1) It is the intent of the Legislature to transfer four hundred fifty thousand dollars in General Funds from the Department of Health and Human Services' 2014-15 budget to the office of the State Court Administrator's budget for the purpose of making the State Court Administrator directly responsible for contracting and paying for court-connected prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, juvenile victim-offender dialogue, and other related services. Such funds shall be transferred on or before October 15, 2014.

(2) The Department of Health and Human Services shall continue to be responsible for contracting with mediation centers approved by the Office of Dispute Resolution to provide family group conferences, mediation, and related

services for non-court-involved and voluntary child welfare or juvenile cases through June 30, 2017, unless extended by the Legislature.

Source: Laws 2014, LB464, § 11.

Operative date July 18, 2014.

(c) LAW ENFORCEMENT PROCEDURES

43-248 Temporary custody of juvenile without warrant; when.

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and the officer has reasonable grounds to believe such juvenile committed such violation;

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(3) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger;

(6) The officer has reasonable grounds to believe the juvenile is truant from school; or

(7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801.

Source: Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93; Laws 2010, LB800, § 14; Laws 2013, LB255, § 10.

43-248.02 Juvenile offender civil citation pilot program; peace officer issue civil citation; contents; advisement; peace officer; duties; juvenile report to juvenile assessment center; failure to comply; effect.

A juvenile offender civil citation pilot program as provided in this section and section 43-248.03 may be undertaken by the peace officers and county and city attorneys of a county containing a city of the metropolitan class. The pilot program shall be according to the following procedures:

(1) A peace officer, upon making contact with a juvenile whom the peace officer has reasonable grounds to believe has committed a misdemeanor offense, other than an offense involving a firearm, sexual assault, or domestic violence, may issue the juvenile a civil citation;

(2) The civil citation shall include: The juvenile's name, address, school of attendance, and contact information; contact information for the juvenile's parents or guardian; a description of the misdemeanor offense believed to have been committed; the juvenile assessment center where the juvenile cited is to appear within seventy-two hours after the issuance of the civil citation; and a warning that failure to appear in accordance with the command of the civil citation or failure to provide the information necessary for the peace officer to

complete the civil citation will result in the juvenile being taken into temporary custody as provided in sections 43-248 and 43-250;

(3) At the time of issuance of a civil citation by the peace officer, the peace officer shall advise the juvenile that the juvenile has the option to refuse the civil citation and be taken directly into temporary custody as provided in sections 43-248 and 43-250. The option to refuse the civil citation may be exercised at any time prior to compliance with any services required pursuant to subdivision (5) of this section;

(4) Upon issuing a civil citation, the peace officer shall provide or send a copy of the civil citation to the appropriate county attorney, the juvenile assessment center, and the parents or guardian of the juvenile;

(5) The juvenile shall report to the juvenile assessment center as instructed by the citation. The juvenile assessment center may require the juvenile to participate in community service or other available services appropriate to the needs of the juvenile identified by the juvenile assessment center which may include family counseling, urinalysis monitoring, or substance abuse and mental health treatment services; and

(6) If the juvenile fails to comply with any services required pursuant to subdivision (5) of this section or if the juvenile is issued a third or subsequent civil citation, a peace officer shall take the juvenile into temporary custody as provided in sections 43-248 and 43-250.

Source: Laws 2010, LB800, § 10.

43-248.03 Civil citation form.

To achieve uniformity, the Supreme Court shall prescribe the form of a civil citation which conforms to the requirements for a civil citation in section 43-248.02 and such other matter as the court deems appropriate. The civil citation shall not include a place for the cited juvenile's social security number.

Source: Laws 2010, LB800, § 11.

43-250 Temporary custody; disposition; custody requirements.

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney

and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing

before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2) or (7) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15; Laws 2013, LB255, § 11.

43-251 Preadjudication placement or detention; mental health placement; prohibitions.

(1) When a juvenile is taken into custody pursuant to sections 43-248 and 43-250, the court or magistrate may take any action for preadjudication placement or detention prescribed in the Nebraska Juvenile Code.

(2) Any juvenile taken into custody under the Nebraska Juvenile Code for allegedly being mentally ill and dangerous shall not be placed in a staff secure juvenile facility, jail, or detention facility designed for juveniles who are accused of criminal acts or for juveniles as described in subdivision (1), (2), or (4) of section 43-247 either as a temporary placement by a peace officer, as a temporary placement by a court, or as an adjudication placement by the court.

Source: Laws 1981, LB 346, § 7; Laws 1985, LB 447, § 15; Laws 1997, LB 622, § 66; Laws 1998, LB 1073, § 14; Laws 2013, LB561, § 9.

43-251.01 Juveniles; placements and commitments; restrictions.

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center; and

(5) A juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Source: Laws 1998, LB 1073, § 25; Laws 2012, LB972, § 1; Laws 2013, LB561, § 10.

(d) PREADJUDICATION PROCEDURES

43-253 Temporary custody; investigation; release; when.

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under section 29-401, 43-248, or 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

(2) The probation officer's decision to release the juvenile from custody or place the juvenile in secure or nonsecure detention shall be based upon the results of the standardized juvenile detention screening instrument described in section 43-260.01.

(3) No juvenile who has been taken into temporary custody under subdivision (1)(c) of section 43-250 shall be detained in any secure detention facility for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (1)(c)(v) of section 43-250.

(4) When the probation officer deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Source: Laws 1981, LB 346, § 9; Laws 1982, LB 787, § 6; Laws 1994, LB 451, § 2; Laws 1998, LB 1073, § 15; Laws 2000, LB 1167, § 15; Laws 2001, LB 451, § 6; Laws 2010, LB800, § 16.

Cross References

Clerk magistrate, authority to determine temporary custody of juvenile, see section 24-519.

43-254 Placement or detention pending adjudication; restrictions; assessment of costs.

Pending the adjudication of any case, and subject to subdivision (5) of section 43-251.01, if it appears that the need for placement or further detention exists,

the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01.

Source: Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16; Laws 2010, LB800, § 17; Laws 2013, LB561, § 11.

43-254.01 Temporary mental health placement; evaluation; procedure.

(1) Any time a juvenile is temporarily placed at a mental health facility pursuant to subsection (3) of section 43-250 or by a court as a juvenile who is mentally ill and dangerous, a mental health professional as defined in section 71-906 shall evaluate the mental condition of the juvenile as soon as reasonably possible but not later than thirty-six hours after the juvenile's admission, unless the juvenile was evaluated by a mental health professional immediately prior to the juvenile being placed in temporary custody and the temporary custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the temporary custody or immediately after the temporary custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(2) If it is the judgment of the mental health professional that the juvenile is not mentally ill and dangerous or that the harm described in section 71-908 is not likely to occur before the matter may be heard by a juvenile court, the mental health professional shall immediately notify the county attorney of that conclusion and the county attorney shall either proceed to hearing before the

court within twenty-four hours or order the immediate release of the juvenile from temporary custody. Such release shall not prevent the county attorney from proceeding on the petition if he or she so chooses.

(3) A juvenile taken into temporary protective custody under subsection (3) of section 43-250 shall have the opportunity to proceed to adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the juvenile, his or her guardian ad litem, attorney, parents, or guardian. Continuances may be granted to permit the juvenile an opportunity to obtain voluntary treatment.

Source: Laws 1997, LB 622, § 67; Laws 2004, LB 1083, § 95; Laws 2010, LB800, § 18.

43-255 Detention or placement; release required; exceptions.

Whenever a juvenile is detained or placed under section 43-250 or 43-253, the juvenile shall be released unconditionally within forty-eight hours after the detention or placement order or the setting of bond, excluding nonjudicial days, unless within such period of time (1) a motion has been filed alleging that such juvenile has violated an order of the juvenile court, (2) a juvenile court petition has been filed pursuant to section 43-274, or (3) a criminal complaint has been filed in a court of competent jurisdiction.

Source: Laws 1981, LB 346, § 11; Laws 1982, LB 787, § 7; Laws 1987, LB 635, § 2; Laws 1998, LB 1073, § 16; Laws 2014, LB464, § 12. Operative date July 18, 2014.

43-256 Continued placement or detention; probable cause hearing; release requirements; exceptions.

When the court enters an order continuing placement or detention pursuant to section 43-253, upon request of the juvenile, or his or her parent, guardian, or attorney, the court shall hold a hearing within forty-eight hours, at which hearing the burden of proof shall be upon the state to show probable cause that such juvenile is within the jurisdiction of the court. Strict rules of evidence shall not apply at the probable cause hearing. The juvenile shall be released if probable cause is not shown. At the option of the court, it may hold the adjudication hearing provided in section 43-279 as soon as possible instead of the probable cause hearing if held within a reasonable period of time. This section and section 43-255 shall not apply to a juvenile (1) who has escaped from a commitment or (2) who has been taken into custody for his or her own protection as provided in subdivision (2) of section 43-248 in which case the juvenile shall be held on order of the court with jurisdiction for a reasonable period of time.

Source: Laws 1981, LB 346, § 12; Laws 1982, LB 787, § 8; Laws 1998, LB 1073, § 17; Laws 2006, LB 1113, § 38; Laws 2010, LB800, § 19.

43-258 Preadjudication physical and mental evaluation; placement; restrictions; reports; costs.

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to

the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2)(a) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed with the Department of Health and Human Services for evaluation, except that on and after October 1, 2013, no juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed with the Department of Health and Human Services. If a juvenile is placed with the Department of Health and Human Services under this subdivision, the department shall make arrangements for an appropriate evaluation. The department shall determine whether the evaluation will be made on a residential or nonresidential basis. Placement with the department for the purposes of this section shall be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(b) Beginning October 1, 2013, pending the adjudication of any case in which a juvenile is alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order an evaluation to be arranged by the Office of Probation Administration. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written or electronic report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246. The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

(4) During any period of detention or evaluation prior to adjudication, costs incurred on behalf of a juvenile shall be paid as provided in section 43-290.01.

(5) The court shall provide copies of the evaluation report and any evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

Source: Laws 1981, LB 346, § 14; Laws 1982, LB 787, § 9; Laws 1985, LB 447, § 17; Laws 1987, LB 638, § 3; Laws 1994, LB 988, § 20; Laws 1996, LB 1155, § 9; Laws 1998, LB 1073, § 19; Laws 2010, LB800, § 20; Laws 2011, LB669, § 26; Laws 2013, LB561, § 12; Laws 2014, LB464, § 13.

Operative date July 18, 2014.

43-260.01 Detention; factors.

The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated shall be subject to subdivision (5) of section 43-251.01 and may be determined as follows:

(1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

(2) If the results indicate that secure detention is not required, nonsecure detention placement or supervision options shall be pursued; and

(3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

Source: Laws 2000, LB 1167, § 14; Laws 2013, LB561, § 13.

43-260.04 Juvenile pretrial diversion program; requirements.

A juvenile pretrial diversion program shall:

(1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:

(a) The juvenile's age;

(b) The nature of the offense and role of the juvenile in the offense;

(c) The number and nature of previous offenses involving the juvenile;

(d) The dangerousness or threat posed by the juvenile to persons or property;
or

(e) The recommendations of the referring agency, victim, and advocates for the juvenile;

(2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;

(3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;

(6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07; and

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law.

Source: Laws 2003, LB 43, § 3; Laws 2013, LB561, § 14.

43-260.05 Juvenile pretrial diversion program; optional services.

A juvenile pretrial diversion program may:

(1) Provide screening services to the court and county attorney or city attorney to help identify likely candidates for the program;

(2) Establish goals for diverted juvenile offenders and monitor performance of the goals;

(3) Coordinate chemical dependency assessments of diverted juvenile offenders when indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;

(4) Coordinate individual, group, and family counseling services;

(5) Oversee the payment of victim restitution by diverted juvenile offenders;

(6) Assist diverted juvenile offenders in identifying and contacting appropriate community resources;

(7) Coordinate educational services to diverted juvenile offenders to enable them to earn a high school diploma or general education development diploma; and

(8) Provide accurate information on how diverted juvenile offenders perform in the program to the juvenile courts, county attorneys, city attorneys, defense attorneys, and probation officers.

Source: Laws 2003, LB 43, § 4; Laws 2013, LB561, § 15.

43-260.07 Juvenile pretrial diversion program; data; duties.

(1) On January 30 of each year, every county attorney or city attorney of a county or city which has a juvenile pretrial diversion program shall report to the Director of Juvenile Diversion Programs the information pertaining to the program required by rules and regulations adopted and promulgated by the Nebraska Commission on Law Enforcement and Criminal Justice.

(2) Juvenile pretrial diversion program data shall be maintained and compiled by the Director of Juvenile Diversion Programs.

Source: Laws 2003, LB 43, § 6; Laws 2013, LB561, § 16.

43-261 Juvenile court petition; contents; filing.

(1)(a) A juvenile court petition and all subsequent proceedings shall be entitled In the Interest of, a Juvenile, inserting the juvenile’s name in the blank. The written petition shall specify which subdivision of section 43-247 is alleged, state the juvenile’s month and year of birth, set forth the facts verified by affidavit, and request the juvenile court to determine whether support will be ordered pursuant to section 43-290. An allegation under subdivision (1), (2), or (4) of section 43-247 is to be made with the same specificity as a criminal complaint. It is sufficient if the affidavit is based upon information and belief.

(b) A juvenile court petition is filed with the clerk of the court having jurisdiction over the matter. If such court is a separate juvenile court, the petition is filed with the clerk of the district court. If such court is a county court sitting as a juvenile court, the petition is filed with the clerk of the county court.

(2) In all cases involving violation of a city or village ordinance, the city attorney or village prosecutor may file a petition in juvenile court. If such a petition is filed, for purposes of such proceeding, references in the Nebraska

Juvenile Code to county attorney are construed to include a city attorney or village prosecutor.

Source: Laws 2014, LB464, § 14.
Operative date July 18, 2014.

43-264 Summons; service.

If a juvenile court petition is filed that alleges that the juvenile is a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a summons with a copy of the petition attached shall be served as provided in section 43-263 on such juvenile and his or her parent, guardian, or custodian requiring the juvenile and such parent, guardian, or custodian to appear personally at the time and place stated. When so ordered by the court, personal service shall be obtained upon such juvenile notwithstanding any other provisions of the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 20; Laws 1985, LB 447, § 20; Laws 2014, LB464, § 15.
Operative date July 18, 2014.

43-272.01 Guardian ad litem; appointment; powers and duties; consultation; payment of costs.

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (2) or (3) of section 43-248, subsection (2) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (7) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian

and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

Source: Laws 1982, LB 787, § 13; Laws 1985, LB 447, § 21; Laws 1990, LB 1222, § 2; Laws 1992, LB 1184, § 12; Laws 1995, LB 305, § 1; Laws 1997, LB 622, § 68; Laws 2008, LB1014, § 39; Laws 2010, LB800, § 21; Laws 2013, LB561, § 17.

(e) PROSECUTION

43-274 County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or mediation; transfer; procedures.

(1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts, the county attorney or city attorney may offer mediation to the juvenile and the victim of the juvenile's act. If both the juvenile and the victim agree to mediation, the juvenile, his or her parent, guardian, or custodian, and the victim shall sign a

mediation consent form and select a mediator or approved center from the roster made available pursuant to section 25-2908. The county attorney or city attorney shall refer the juvenile and the victim to such mediator or approved center. The mediation sessions shall occur within thirty days after the date the mediation referral is made unless an extension is approved by the county attorney or city attorney. The juvenile or his or her parent, guardian, or custodian shall pay the mediation fees. The fee shall be determined by the mediator in private practice or by the approved center. A juvenile shall not be denied services at an approved center because of an inability to pay.

(b) Terms of the mediation agreement shall specify monitoring, completion, and reporting requirements. The county attorney or city attorney, the court, or the probation office shall be notified by the designated monitor if the juvenile does not complete the agreement within the agreement's specified time.

(c) Terms of the agreement may include one or more of the following:

- (i) Participation by the juvenile in certain community service programs;
- (ii) Payment of restitution by the juvenile to the victim;
- (iii) Reconciliation between the juvenile and the victim; and
- (iv) Any other areas of agreement.

(d) If no mediation agreement is reached, the mediator or approved center will report that fact to the county attorney or city attorney within forty-eight hours of the final mediation session excluding nonjudicial days.

(e) If a mediation agreement is reached and the agreement does not violate public policy, the agreement shall be approved by the county attorney or city attorney. If the agreement is not approved and the victim agrees to return to mediation (i) the juvenile may be referred back to mediation with suggestions for changes needed in the agreement to meet approval or (ii) the county attorney or city attorney may proceed with the filing of a criminal charge or juvenile court petition. If the juvenile agrees to return to mediation but the victim does not agree to return to mediation, the county attorney or city attorney may consider the juvenile's willingness to return to mediation when determining whether or not to file a criminal charge or a juvenile court petition.

(f) If the juvenile meets the terms of an approved mediation agreement, the county attorney or city attorney shall not file a criminal charge or juvenile court petition against the juvenile for the acts for which the juvenile was referred to mediation.

(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.

(5) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for good cause shown. The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponder-

ance of the evidence shows that the proceeding should be transferred to the county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision. If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.

Source: Laws 1981, LB 346, § 30; Laws 1987, LB 638, § 4; Laws 1998, LB 1073, § 20; Laws 2003, LB 43, § 13; Laws 2014, LB464, § 16.
Operative date January 1, 2015.

43-276 County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, mediation, or transfer of case; determination; considerations.

The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or mediation, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (6) the best interests of the juvenile; (7) consideration of public safety; (8) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (9) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (10) whether the victim agrees to participate in mediation; (11) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (12) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (13) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (14) whether the juvenile is a criminal street gang member; and (15) such other matters as the parties deem relevant to aid in the decision.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30; Laws 2012, LB972, § 2; Laws 2014, LB464, § 17.

Operative date January 1, 2015.

(f) ADJUDICATION PROCEDURES

43-278 Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic or videoconference hearing; authorized.

Except as provided in sections 43-254.01 and 43-277.01, all cases filed under subdivision (3) of section 43-247 shall have an adjudication hearing not more

than ninety days after a petition is filed. Upon a showing of good cause, the court may continue the case beyond the ninety-day period. The court shall also review every case filed under such subdivision which has been adjudicated or transferred to it for disposition not less than once every six months. All communications, notices, orders, authorizations, and requests authorized or required in the Nebraska Juvenile Code; all nonevidentiary hearings; and any evidentiary hearings approved by the court and by stipulation of all parties may be heard by the court telephonically or by videoconferencing in a manner that ensures the preservation of an accurate record. All of the orders generated by way of a telephonic or videoconference hearing shall be recorded as if the judge were conducting a hearing on the record.

Source: Laws 1981, LB 346, § 34; Laws 1992, LB 1184, § 13; Laws 1997, LB 622, § 71; Laws 2010, LB800, § 22; Laws 2013, LB103, § 2.

43-279.01 Juvenile in need of assistance or termination of parental rights; rights of parties; appointment of counsel; court; powers; proceedings.

(1) When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 or when termination of parental rights is sought pursuant to subdivision (6) of section 43-247 and the parent, custodian, or guardian appears with or without counsel, the court shall inform the parties of the:

(a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;

(b) Right of the parent to engage counsel of his or her choice at his or her own expense or to have counsel appointed if the parent is unable to afford to hire a lawyer;

(c) Right of a stepparent, custodian, or guardian to engage counsel of his or her choice and, if there are allegations against the stepparent, custodian, or guardian or when the petition is amended to include such allegations, to have counsel appointed if the stepparent, custodian, or guardian is unable to afford to hire a lawyer;

(d) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the party guilty of any crime;

(e) Right to confront and cross-examine witnesses;

(f) Right to testify and to compel other witnesses to attend and testify;

(g) Right to a speedy adjudication hearing; and

(h) Right to appeal and have a transcript or record of the proceedings for such purpose.

(2) The court shall have the discretion as to whether or not to appoint counsel for a person who is not a party to the proceeding. If counsel is appointed, failure of the party to maintain contact with his or her court-appointed counsel or to keep such counsel advised of the party's current address may result in the counsel being discharged by the court.

(3) After giving the parties the information prescribed in subsection (1) of this section, the court may accept an in-court admission, an answer of no contest, or a denial from any parent, custodian, or guardian as to all or any part of the allegations in the petition. The court shall ascertain a factual basis for an admission or an answer of no contest.

(4) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(5) If the court shall find that the allegations of the petition or motion have not been proven by the requisite standard of proof, it shall dismiss the case or motion. If the court sustains the petition or motion, it shall allow a reasonable time for preparation if needed and then proceed to inquire into the matter of the proper disposition to be made of the juvenile.

Source: Laws 1985, LB 447, § 23; Laws 1989, LB 22, § 3; Laws 2013, LB561, § 18.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-281 Adjudication of jurisdiction; temporary placement for evaluation; restrictions on placement; copy of report or evaluation.

(1) Following an adjudication of jurisdiction and prior to final disposition, the court may place the juvenile with the Office of Juvenile Services or the Department of Health and Human Services for evaluation, except that on and after October 1, 2013, no juvenile adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed with the office or the department. The office or department shall arrange and pay for an appropriate evaluation if the office or department determines that there are no parental funds or private or public insurance available to pay for such evaluation, except that on and after October 1, 2013, the office and the department shall not be responsible for such evaluations of any juvenile adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247.

(2) On and after October 1, 2013, following an adjudication of jurisdiction under subdivision (1), (2), (3)(b), or (4) of section 43-247 and prior to final disposition, the court may order an evaluation to be arranged by the Office of Probation Administration. For a juvenile in detention, the court shall order that such evaluation be completed and the juvenile returned to the court within twenty-one days after the evaluation. For a juvenile who is not in detention, the evaluation shall be completed and the juvenile returned to the court within thirty days. The physician, psychologist, licensed mental health practitioner, licensed drug and alcohol counselor, or other provider responsible for completing the evaluation shall have up to ten days to complete the evaluation after receiving the referral authorizing the evaluation.

(3) A juvenile pending evaluation ordered under subsection (1) or (2) of this section shall not reside in a detention facility at the time of the evaluation or while waiting for the completed evaluation to be returned to the court unless detention of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

(4) The court shall provide copies of predisposition reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

Source: Laws 1981, LB 346, § 37; Laws 1982, LB 787, § 16; Laws 1994, LB 436, § 1; Laws 1998, LB 1073, § 24; Laws 2013, LB561, § 19; Laws 2014, LB464, § 18.

Operative date July 18, 2014.

(g) DISPOSITION

43-283.01 Preserve and reunify the family; reasonable efforts; requirements.

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

Source: Laws 1998, LB 1041, § 24; Laws 2009, LB517, § 1.

43-284 Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions.

When any juvenile is adjudged to be under subdivision (3), (4), or (8) of section 43-247, the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296, (5) the care of a suitable family, or (6) the care and custody of the Department of Health and Human Services, except that a juvenile who is adjudicated to be a juvenile described in subdivision (3)(b) or (4) of section 43-247 shall not be committed to the care and custody or supervision of the department on or after October 1, 2013.

Under subdivision (1), (2), (3), (4), or (5) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, education, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until suitable provisions may be made for the juvenile without such payment.

The amount to be paid by a county for education pursuant to this section shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed and shall be paid only for education in kindergarten through grade twelve.

The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01.

Source: Laws 1981, LB 346, § 40; Laws 1982, LB 353, § 1; Laws 1987, LB 635, § 3; Laws 1987, LB 638, § 5; Laws 1989, LB 182, § 10; Laws 1996, LB 1044, § 130; Laws 1997, LB 622, § 72; Laws 1998, LB 1041, § 25; Laws 2001, LB 23, § 2; Laws 2013, LB561, § 20.

Cross References

Child removed from home, investigation and examination required, see section 43-1311.

43-284.01 Juvenile voluntarily relinquished; custody; alternative disposition; effect.

Any juvenile adjudged to be under subdivision (7) of section 43-247 shall remain in the custody of the Department of Health and Human Services or the

licensed child placement agency to whom the juvenile has been relinquished unless the court finds by clear and convincing evidence that the best interests of the juvenile require that an alternative disposition be made. If the court makes such finding, then alternative disposition may be made as provided under section 43-284. Such alternative disposition shall relieve the department or licensed child placement agency of all responsibility with regard to such juvenile.

Source: Laws 1985, LB 447, § 9; Laws 1989, LB 182, § 11; Laws 1996, LB 1044, § 131; Laws 2013, LB561, § 21.

43-284.02 Ward of the department; appointment of guardian; payments allowed.

The Department of Health and Human Services may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. All such payments shall terminate on or before the child's nineteenth birthday unless the child is eligible for extended guardianship assistance from the department pursuant to sections 43-4511 and 43-4514. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Source: Laws 1986, LB 600, § 14; Laws 1996, LB 1044, § 132; Laws 2007, LB296, § 108; Laws 2014, LB853, § 22; Laws 2014, LB908, § 4.

Effective date July 18, 2014.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB853, section 22, with LB908, section 4, to reflect all amendments.

43-285 Care of juvenile; duties; authority; placement plan and report; when; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile

and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible juveniles, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care

review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22; Laws 2014, LB464, § 19; Laws 2014, LB853, § 23; Laws 2014, LB908, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB464, section 19, with LB853, section 23, and LB908, section 5, to reflect all amendments.

Note: Changes made by LB853 and LB908 became effective July 18, 2014. Changes made by LB464 became operative July 18, 2014.

Cross References

Foster Care Review Act, see section 43-1318.

Medical Assistance Act, see section 68-901.

Young Adult Bridge to Independence Act, see section 43-4501.

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a)(i) This subdivision applies until October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer;

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or

(C) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a)(i) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment.

(ii) This subdivision applies beginning October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer; or

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer;

(b)(i) This subdivision applies to all juveniles committed to the Office of Juvenile Services prior to July 1, 2013. The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of fourteen years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(ii) This subdivision applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013.

When it is alleged that the juvenile has exhausted all levels of probation supervision and options for community-based services and section 43-251.01 has been satisfied, a motion for commitment to a youth rehabilitation and treatment center may be filed and proceedings held as follows:

(A) The motion shall set forth specific factual allegations that support the motion and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267; and

(B) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the burden is upon the state by a preponderance of the evidence to show that:

(I) All levels of probation supervision have been exhausted;

(II) All options for community-based services have been exhausted; and

(III) Placement at a youth rehabilitation and treatment center is a matter of immediate and urgent necessity for the protection of the juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

After the hearing, the court may commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center as a condition of an order of intensive supervised probation. Upon commitment

by the court to the Office of Juvenile Services, the court shall immediately notify the Office of Juvenile Services of the commitment. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile from commitment to the Office of Juvenile Services. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section.

The Office of Juvenile Services shall notify those required to be served by sections 43-262 to 43-267, all interested parties, and the committing court of the pending discharge of a juvenile from the youth rehabilitation and treatment center sixty days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of pending discharge by the Office of Juvenile Services, the court shall set a continued disposition hearing in anticipation of reentry. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing an individualized reentry plan for the juvenile as provided in section 43-425. The Office of Juvenile Services shall provide a copy of the individualized reentry plan to the juvenile, the juvenile's attorney, and the county attorney or city attorney prior to the continued disposition hearing. At the continued disposition hearing, the court shall review and approve or modify the individualized reentry plan, place the juvenile under probation supervision, and enter any other order allowed by law. No hearing is required if all interested parties stipulate to the individualized reentry plan by signed motion. In such a case, the court shall approve the conditions of probation, approve the individualized reentry plan, and place the juvenile under probation supervision.

The Office of Juvenile Services is responsible for transportation of the juvenile to and from the youth rehabilitation and treatment center. The Office of Juvenile Services may contract for such services. A plan for a juvenile's transport to return to the community shall be a part of the individualized reentry plan. The Office of Juvenile Services may approve family to provide such transport when specified in the individualized reentry plan; or

(c) Beginning July 1, 2013, and until October 1, 2013, the court may commit such juvenile to the Office of Juvenile Services for community supervision.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or until October 1, 2013, enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or at an approved center selected from the roster made available pursuant to section 25-2908.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed or is about to commit a substance abuse violation, a noncriminal violation, or a violation of a

condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or court order. Such preliminary hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

(6) Costs incurred on behalf of a juvenile under this section shall be paid as provided in section 43-290.01.

(7) When any juvenile is adjudicated to be a juvenile described in subdivision (4) of section 43-247, the juvenile court shall within thirty days of adjudication transmit to the Director of Motor Vehicles an abstract of the court record of adjudication.

Source: Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4; Laws 2012, LB972, § 3; Laws 2013, LB561, § 23; Laws 2014, LB464, § 20.
Operative date July 18, 2014.

Cross References

Juvenile probation officers, appointment, see section 29-2253.

Placements and commitments, restrictions, see section 43-251.01.

43-286.01 Juveniles; substance abuse or noncriminal violations of probation; administrative sanctions; probation officer; duties; powers; county attorney; file action to revoke probation; when.

(1) For purposes of this section:

(a) Administrative sanction means additional probation requirements imposed upon a juvenile subject to the supervision of a probation officer by his or her probation officer, with the full knowledge and consent of such juvenile and such juvenile's parents or guardian, designed to hold such juvenile accountable for substance abuse or noncriminal violations of conditions of probation, including, but not limited to:

- (i) Counseling or reprimand by his or her probation officer;
- (ii) Increased supervision contact requirements;
- (iii) Increased substance abuse testing;
- (iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;
- (v) Modification of a designated curfew for a period not to exceed thirty days;
- (vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;
- (vii) Travel restrictions to stay within his or her residence or county of residence or employment unless otherwise permitted by the supervising probation officer;
- (viii) Restructuring court-imposed financial obligations to mitigate their effect on the juvenile subject to the supervision of a probation officer; and
- (ix) Implementation of educational or cognitive behavioral programming;

(b) Noncriminal violation means activities or behaviors of a juvenile subject to the supervision of a probation officer which create the opportunity for re-offending or which diminish the effectiveness of probation supervision resulting in a violation of an original condition of probation, including, but not limited to:

- (i) Moving traffic violations;
- (ii) Failure to report to his or her probation officer;

(iii) Leaving the juvenile's residence, jurisdiction of the court, or the state without the permission of the court or his or her probation officer;

(iv) Failure to regularly attend school, vocational training, other training, counseling, treatment, programming, or employment;

(v) Noncompliance with school rules;

(vi) Continued violations of home rules;

(vii) Failure to notify his or her probation officer of change of address, school, or employment;

(viii) Frequenting places where controlled substances are illegally sold, used, distributed, or administered and association with persons engaged in illegal activity;

(ix) Failure to perform community service as directed; and

(x) Curfew or electronic monitoring violations; and

(c) Substance abuse violation means activities or behaviors of a juvenile subject to the supervision of a probation officer associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of probation, including, but not limited to:

(i) Positive breath test for the consumption of alcohol;

(ii) Positive urinalysis for the illegal use of drugs;

(iii) Failure to report for alcohol testing or drug testing;

(iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment; and

(v) Tampering with alcohol or drug testing.

(2) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has committed or is about to commit a substance abuse violation or noncriminal violation while on probation, but that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more administrative sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon such juvenile's risk level, the severity of the violation, and the juvenile's response to the violation. If administrative sanctions are to be imposed, such juvenile shall acknowledge in writing the nature of the violation and agree upon the administrative sanction with approval of such juvenile's parents or guardian. Such juvenile has the right to decline to acknowledge the violation, and if he or she declines to acknowledge the violation, the probation officer shall submit a written report pursuant to subdivision (2)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the adjudicating court with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the juvenile subject to the supervision of a probation officer.

(3) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated or is about to violate a condition of probation other than a substance abuse violation or noncriminal violation and that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall submit a written report to the adjudicating court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation.

(4) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated or is about to violate a condition of his or her probation and that such juvenile will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall take such juvenile into temporary custody without a warrant and may call on any peace officer for assistance as provided in section 43-248.

(5) Immediately after detention pursuant to subsection (4) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such detention and of any violation of probation. After prompt consideration of the written report, the county attorney shall:

(a) Order the release of the juvenile from confinement subject to the supervision of a probation officer; or

(b) File with the adjudicating court a motion or information to revoke the probation.

(6) Whenever a county attorney receives a report from a probation officer that a juvenile subject to the supervision of a probation officer has violated a condition of probation, the county attorney may file a motion or information to revoke probation.

(7) The probation administrator shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2010, LB800, § 7; R.S.Supp.,2010, § 29-2262.08; Laws 2011, LB463, § 5.

43-287 Impoundment of license or permit issued under Motor Vehicle Operator's License Act; other powers of court; copy of abstract to Department of Motor Vehicles; fine for excessive absenteeism from school; not eligible for ignition interlock permit.

(1) When a juvenile is adjudged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the juvenile court may:

(a) If such juvenile holds any license or permit issued under the Motor Vehicle Operator's License Act, impound any such license or permit for thirty days; or

(b) If such juvenile does not have a permit or license issued under the Motor Vehicle Operator's License Act, prohibit such juvenile from obtaining any permit or any license pursuant to the act for which such juvenile would otherwise be eligible until thirty days after the date of such order.

(2) A copy of an abstract of the juvenile court's adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under subsection (1) of this section. If a juvenile

whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of section 60-4,108.

(3) When a juvenile is adjudged to be a juvenile described in subdivision (3)(a) of section 43-247 for excessive absenteeism from school, the juvenile court may issue the parents or guardians of such juvenile a fine not to exceed five hundred dollars for each offense or order such parents or guardians to complete specified hours of community service. For community service ordered under this subsection, the juvenile court may require that all or part of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

(4) A juvenile who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 2010, LB800, § 24; Laws 2012, LB751, § 5.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

43-287.01 Repealed. Laws 2010, LB 800, § 40.

43-287.02 Repealed. Laws 2010, LB 800, § 40.

43-287.03 Repealed. Laws 2010, LB 800, § 40.

43-287.04 Repealed. Laws 2010, LB 800, § 40.

43-287.05 Repealed. Laws 2010, LB 800, § 40.

43-287.06 Repealed. Laws 2010, LB 800, § 40.

43-289 Juvenile committed; release from confinement upon reaching age of majority; hospital treatment; custody in state institutions; discharge.

In no case shall a juvenile committed under the terms of the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. Whenever any juvenile has been committed to the Department of Health and Human Services, the department shall follow the court's orders, if any, concerning the juvenile's specific needs for treatment or special care for his or her physical well-being and healthy personality. If the court finds any such juvenile to be a person with an intellectual disability, the court may, upon attaching a physician's certificate and a report as to the mental capacity of such person, commit such juvenile directly to an authorized and appropriate state or local facility or home.

The marriage of any juvenile committed to a state institution under the age of nineteen years shall not make such juvenile of the age of majority.

A juvenile committed to any such institution shall be subject to the control of the superintendent thereof, and the superintendent, with the advice and consent of the Department of Health and Human Services, shall adopt and promulgate rules and regulations for the promotion, paroling, and final discharge of residents such as shall be considered mutually beneficial for the institution and the residents. Upon final discharge of any resident, such department shall file a certified copy of the discharge with the court which committed the resident.

Source: Laws 1981, LB 346, § 45; Laws 1985, LB 447, § 26; Laws 1986, LB 1177, § 18; Laws 1989, LB 182, § 15; Laws 1996, LB 1044, § 141; Laws 2013, LB23, § 10.

43-290 Costs of care and treatment; payment; procedure.

It is the purpose of this section to promote parental responsibility and to provide for the most equitable use and availability of public money.

Pursuant to a petition filed by a county attorney or city attorney having knowledge of a juvenile in his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3), or (4) of section 43-247, whenever the care or custody of a juvenile is given by the court to someone other than his or her parent, which shall include placement with a state agency, or when a juvenile is given medical, psychological, or psychiatric study or treatment under order of the court, the court shall make a determination of support to be paid by a parent for the juvenile at the same proceeding at which placement, study, or treatment is determined or at a separate proceeding. Such proceeding, which may occur prior to, at the same time as, or subsequent to adjudication, shall be in the nature of a disposition hearing.

At such proceeding, after summons to the parent of the time and place of hearing served as provided in sections 43-262 to 43-267, the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or part the support, study, and treatment of the juvenile, which amount ordered paid shall be the extent of the liability of the parent. The court in making such order shall give due regard to the cost of the support, study, and treatment of the juvenile, the ability of the parent to pay, and the availability of money for the support of the juvenile from previous judicial decrees, social security benefits, veterans benefits, or other sources. Support thus received by the court shall be transmitted to the person, agency, or institution having financial responsibility for such support, study, or treatment and, if a state agency or institution, remitted by such state agency or institution quarterly to the Director of Administrative Services for credit to the proper fund.

Whenever medical, psychological, or psychiatric study or treatment is ordered by the court, whether or not the juvenile is placed with someone other than his or her parent, or if such study or treatment is otherwise provided as determined necessary by the custodian of the juvenile, the court shall inquire as to the availability of insured or uninsured health care coverage or service plans which include the juvenile. The court may order the parent to pay over any plan benefit sums received on coverage for the juvenile. The payment of any deductible under the health care benefit plan covering the juvenile shall be the responsibility of the parent. If the parent willfully fails or refuses to pay the sum ordered or to pay over any health care plan benefit sums received, the court may proceed against him or her as for contempt, either on the court's own

motion or on the motion of the county attorney or authorized attorney as provided in section 43-512, or execution shall issue at the request of any person, agency, or institution treating or maintaining such juvenile. The court may afterwards, because of a change in the circumstances of the parties, revise or alter the order of payment for support, study, or treatment.

If the juvenile has been committed to the care and custody of the Department of Health and Human Services, the department shall pay the costs for the support, study, or treatment of the juvenile which are not otherwise paid by the juvenile's parent.

If no provision is otherwise made by law for the support or payment for the study or treatment of the juvenile, compensation for the support, study, or treatment shall be paid, when approved by an order of the court, out of a fund which shall be appropriated by the county in which the petition is filed.

The juvenile court shall retain jurisdiction over a parent ordered to pay support for the purpose of enforcing such support order for so long as such support remains unpaid but not to exceed ten years from the nineteenth birthday of the youngest child for whom support was ordered.

Source: Laws 1981, LB 346, § 46; Laws 1982, LB 787, § 20; Laws 1987, LB 638, § 7; Laws 1989, LB 182, § 16; Laws 1996, LB 1044, § 142; Laws 2003, LB 43, § 15; Laws 2014, LB464, § 22.
Operative date July 18, 2014.

43-290.01 Costs; payment.

(1) Payment of costs for juveniles described in or alleged to be described in subdivision (1), (2), (3)(b), or (4) of section 43-247, except as ordered by the court pursuant to section 43-290, shall be paid by:

(a) The county for the period of time prior to adjudication, except as provided in subdivision (1)(b) of this section. Such costs paid for by the county include, but are not limited to, the costs of detention, services, detention alternatives, treatment, voluntary services, and transportation;

(b) The Office of Probation Administration for:

(i) The period of time after adjudication until termination of court jurisdiction, including, but not limited to, the costs of evaluations, detention, services, placement that is not detention, detention alternatives, treatment, voluntary services, and transportation, other than transportation paid under subdivision (1)(c) of this section;

(ii) The time period prior to adjudication for a juvenile who is on probation and is alleged to have committed a new violation or is a juvenile who is subject to a motion to revoke probation; and

(iii) Preadjudication evaluations and preadjudication placements that are not detention; and

(c) The Office of Juvenile Services for any period of time from when the court commits the juvenile to the Office of Juvenile Services until the juvenile is discharged by the Office of Juvenile Services, including, but not limited to, the costs of evaluations, placement, services, detention including detention costs prior to placement, and transportation to and from the youth rehabilitation and treatment center.

(2) For payment of costs involved in the adjudication and disposition of juveniles, other than those described in subsection (1) or (3) of this section:

(a) The Department of Health and Human Services shall pay the costs incurred during an evaluation or placement with the department that is ordered by the court except as otherwise ordered by the court pursuant to section 43-290;

(b) Payment of costs for juveniles with a court adjudication or disposition under section 43-284: Upon a determination by the court that there are no parental, private, or other funds available for the care, custody, education, and maintenance of the juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund appropriated annually by the county where the petition is filed until suitable provisions are made for the juvenile without such payment. The amount to be paid by a county for education shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed and shall be paid only for education in kindergarten through grade twelve; and

(c) Other costs shall be as provided in section 43-290.

(3) Payment of costs of medical expenses of juveniles under the Nebraska Juvenile Code shall be as provided in section 43-290.

Source: Laws 2014, LB464, § 21.

Operative date July 18, 2014.

43-292 Termination of parental rights; grounds.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

(1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

(3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;

(5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

(7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

(8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.

Source: Laws 1981, LB 346, § 48; Laws 1992, LB 1184, § 15; Laws 1996, LB 1044, § 143; Laws 1998, LB 1041, § 27; Laws 2009, LB517, § 2.

43-296 Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.

All associations receiving juveniles under the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Health and Human Services as are public charitable institutions of this state, and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of such code. Every such association shall annually, on or before September 15, make a report to the department showing its condition, management, and competency to adequately care for such juveniles as are or may be committed to it and such other facts as the department may require. Upon receiving such report, the department shall provide an electronic copy of such report to the Health and Human Services Committee of the Legislature on or before September 15 of 2012, 2013, and 2014. Upon the department being satisfied that such association is competent and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or desiring to receive juveniles under the provisions of the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

Source: Laws 1981, LB 346, § 52; Laws 1985, LB 447, § 28; Laws 1996, LB 1044, § 146; Laws 2012, LB1160, § 11; Laws 2013, LB222, § 6.

Cross References

Department of Health and Human Services, supervisory powers, see section 43-707.

43-297.01 Office of Probation Administration; duties; initial placement and level of care; court order; review; notice of placement change; hearing; exception.

(1) Following an adjudication, whenever any juvenile is placed on juvenile probation subject to the supervision of a probation officer, the Office of Probation Administration is deemed to have placement and care responsibility for the juvenile.

(2) The court shall order the initial placement and level of care for the juvenile placed on juvenile probation. Prior to determining the placement and level of care for a juvenile, the court may solicit a recommendation from the Office of Probation Administration. The status of each juvenile placed out-of-home shall be reviewed periodically, but not less than once every six months by the court in person, by video, or telephonically. Periodic reviews shall assess the juvenile's safety and the continued necessity and appropriateness of placement, ensure case plan compliance, and monitor the juvenile's progress. The court shall determine whether an out-of-home placement made by the office is in the best interests of the juvenile. The office shall provide all interested parties with a copy of any report filed with the court by the office pursuant to this subsection.

(3) The Office of Probation Administration may transition a juvenile to a less restrictive placement or to a placement which has the same level of restriction as the current placement. In order to make a placement change under this section, the office shall file a notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the change of placement. The court, on its own motion, or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed pending the outcome of the hearing on the objection.

(4) The Office of Probation Administration may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The office shall provide all interested parties with a copy of any report filed with the court by the office pursuant to this subsection.

(5) Nothing in this section prevents the court on an ex parte basis from approving an immediate change in placement upon good cause shown.

Source: Laws 2014, LB464, § 23.

Operative date July 18, 2014.

(h) POSTDISPOSITIONAL PROCEDURES

43-2,102 Repealed. Laws 2010, LB 800, § 40.

43-2,103 Repealed. Laws 2010, LB 800, § 40.

43-2,104 Repealed. Laws 2010, LB 800, § 40.

43-2,105 Repealed. Laws 2010, LB 800, § 40.

43-2,106.01 Judgments or final orders; appeal; parties; cost.

(1) Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals. The appellate court shall conduct its review in an expedited manner and shall render the judgment and write its opinion, if any, as speedily as possible.

(2) An appeal may be taken by:

(a) The juvenile;

(b) The guardian ad litem;

(c) The juvenile's parent, custodian, or guardian. For purposes of this subdivision, custodian or guardian shall include, but not be limited to, the Department of Health and Human Services, an association, or an individual to whose care the juvenile has been awarded pursuant to the Nebraska Juvenile Code; or

(d) The county attorney or petitioner, except that in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy, an appeal of such issues may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319.

(3) In all appeals from the county court sitting as a juvenile court, the judgment of the appellate court shall be certified without cost to the juvenile court for further proceedings consistent with the determination of the appellate court.

Source: Laws 1959, c. 189, § 11, p. 686; Laws 1972, LB 1305, § 1; R.S.1943, (1978), § 43-238; Laws 1981, LB 346, § 83; Laws 1989, LB 182, § 18; Laws 1991, LB 732, § 104; Laws 1992, LB 360, § 11; R.S.Supp.,1992, § 43-2,126; Laws 1994, LB 1106, § 6; Laws 1996, LB 1044, § 149; Laws 2010, LB800, § 25.

43-2,106.03 Rehabilitative services; hearing; court order; use.

Any time after the disposition of a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, upon the motion of any party or the court on its own motion, a hearing may be held regarding the amenability of the juvenile to the rehabilitative services that can be provided under the Nebraska Juvenile Code. The court may enter an order, based upon evidence presented at the hearing, finding that a juvenile is not amenable to rehabilitative services that can be provided under the Nebraska Juvenile Code. The reasons for such a finding shall be stated in the order. Such an order shall be considered by the county attorney in making a future determination under section 43-276 regarding such juvenile and by the court when considering a future transfer motion under section 29-1816 or 43-274 or any future charge or petition regarding such juvenile.

Source: Laws 2008, LB1014, § 41; Laws 2014, LB464, § 24.
Operative date July 18, 2014.

(i) MISCELLANEOUS PROVISIONS

43-2,108 Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exception.

(1) The juvenile court judge shall keep a minute book in which he or she shall enter minutes of all proceedings of the court in each case, including appear-

ances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. Juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, certificates or receipts of mailing, minutes of the court, findings, orders, decrees, judgments, and motions.

(2) Except as provided in subsections (3) and (4) of this section, the medical, psychological, psychiatric, and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court shall not be open to inspection, without order of the court. Such records shall be made available to a district court of this state or the District Court of the United States on the order of a judge thereof for the confidential use of such judge or his or her probation officer as to matters pending before such court but shall not be made available to parties or their counsel; and such district court records shall be made available to a county court or separate juvenile court upon request of the county judge or separate juvenile judge for the confidential use of such judge and his or her probation officer as to matters pending before such court, but shall not be made available by such judge to the parties or their counsel.

(3) As used in this subsection, confidential record information shall mean all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247, access to all confidential record information in such cases shall be granted only as follows: (a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information; (b) the court of jurisdiction may disseminate such confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(4) The court shall provide copies of predispositional reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

(5) Nothing in subsection (3) of this section shall be construed to restrict the dissemination of confidential record information between any individual or public or private agency, institute, facility, or clinic, except any such confidential record information disseminated by the court of jurisdiction pursuant to this section shall be for the exclusive and private use of those to whom it was released and shall not be disseminated further without order of such court.

(6)(a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

(b) Upon application by the county attorney or by the director of the facility where the juvenile is placed and upon a showing of good cause therefor, a judge of the juvenile court having jurisdiction over the juvenile or of the county where the facility is located may order that the records shall not be made available to the juvenile if, in the judgment of the court, the availability of such records to the juvenile will adversely affect the juvenile's mental state and the treatment thereof.

Source: Laws 1981, LB 346, § 65; Laws 1997, LB 622, § 73; Laws 2014, LB464, § 25.

Operative date July 18, 2014.

43-2,108.01 Sealing of records; juveniles eligible.

Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney (1) released the juvenile without filing a juvenile petition or criminal complaint, (2) offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code, (3) filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, (4) filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia, or (5) filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense that may be waived.

Source: Laws 2010, LB800, § 26; Laws 2011, LB463, § 6.

43-2,108.02 Sealing of records; notice to juvenile; contents.

For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall provide the juvenile with written notice that:

(1) States in plain language that the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile has satisfactorily completed the diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court; and

(2) Explains in plain language what sealing the record means.

Source: Laws 2010, LB800, § 27; Laws 2011, LB463, § 7.

43-2,108.03 Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

(1) If a juvenile described in section 43-2,108.01 was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation but no juvenile petition or criminal complaint was filed against the juvenile with respect to the arrest or custody, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation that no criminal charge or juvenile court petition was filed.

(2) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion or mediation, the county attorney or city attorney shall notify the government agency responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion or mediation.

(3) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but later dismissed and any required pretrial diversion or mediation for any related charges have been completed and no related charges remain under the jurisdiction of the court, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation and the court where the charge or petition was filed that the charge or juvenile court petition was dismissed.

(4) Upon receiving notice under subsection (1), (2), or (3) of this section, the government agency or court shall immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, or mediation.

(5) If a juvenile described in section 43-2,108.01 has satisfactorily completed such juvenile's probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed such juvenile's diversion or sentence in county court:

(a) The court may initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or sentence of the county court; and

(b) If the juvenile has attained the age of seventeen years, the court shall initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or diversion or sentence of the county court, except that the court is not required to initiate proceedings to seal a record pertaining to a misdemeanor or infraction not described in subdivision (4) of section 43-2,108.01 under a city or village ordinance that has no possible jail sentence. Such a record may be sealed under subsection (6) of this section.

(6) If a juvenile described in section 43-2,108.01 has satisfactorily completed diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court, the juvenile or the juvenile's parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in such disposition, adjudication, or diversion of the juvenile court or diversion or sentence of the county court.

Source: Laws 2010, LB800, § 28; Laws 2011, LB463, § 8.

43-2,108.04 Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.

(1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record of the proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to the sealing of the record, the court may: (a) Order the record of the juvenile under consideration be sealed without conducting a hearing on the motion; or (b) decide in its discretion to conduct a hearing on the motion. If the court decides in its discretion to conduct a hearing on the motion, the court shall conduct the hearing within sixty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(4) If a party receiving notice under subsection (1) of this section files a response with the court objecting to the sealing of the record, the court shall conduct a hearing on the motion within sixty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(5) After conducting a hearing in accordance with this section, the court may order the record of the juvenile that is the subject of the motion be sealed if it finds that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

- (a) The age of the juvenile;
- (b) The nature of the offense and the role of the juvenile in the offense;
- (c) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, probation, supervision, other treatment or rehabilitation program, or sentence;
- (d) The education and employment history of the juvenile; and
- (e) Any other circumstances that may relate to the rehabilitation of the juvenile.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

Source: Laws 2010, LB800, § 29; Laws 2011, LB463, § 9.

43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(1) If the court orders the record of a juvenile sealed pursuant to section 43-2,108.04, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iv) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile what sealing the record means verbally if the juvenile is present in the court at the time the court issues the sealing order or by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order.

(2) The effect of having a record sealed under section 43-2,108.04 is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, and to any attorney representing the subject of the sealed record. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act;

(e) Upon application, by the person who is the subject of the sealed record and by persons authorized by the person who is the subject of the sealed record who are named in that application;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court, only if the research results in no disclosure of the person's identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if a person whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the department's web site to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who violates this section may be held in contempt of court.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11; Laws 2013, LB561, § 25; Laws 2014, LB464, § 26.

Operative date July 18, 2014.

ARTICLE 4**OFFICE OF JUVENILE SERVICES**

Section

- 43-401. Act, how cited.
- 43-404. Office of Juvenile Services; created; powers and duties.
- 43-405. Office of Juvenile Services; administrative duties.
- 43-406. Office of Juvenile Services; treatment programs, services, and systems; requirements.
- 43-407. Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent; implement evidence-based practices, policies, and procedures; report; contents; Executive Board of Legislative Council; powers.
- 43-408. Office of Juvenile Services; committing court; determination of placement and treatment services; review status; when.
- 43-410. Juvenile absconding; authority to apprehend.
- 43-412. Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice of discharge.
- 43-413. Evaluations authorized.
- 43-414. Office of Juvenile Services; evaluation powers.
- 43-415. Evaluation; time limitation; extension; hearing.
- 43-416. Office of Juvenile Services; parole powers; notice to committing court.
- 43-417. Juvenile parole; considerations; discharge from youth rehabilitation and treatment center; considerations.
- 43-418. Parole violations; apprehension and detention; when.
- 43-419. Parole violation; preliminary hearing.
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- 43-422. Parole violation; waiver and admission.
- 43-423. Parole violation hearing; requirements; appeal.
- 43-424. Assault, escape, or attempt to escape; documentation required; copy to court and county attorney.
- 43-425. Community and Family Reentry Process; created; applicability; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.

43-401 Act, how cited.

Sections 43-401 to 43-424 shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 33; Laws 2012, LB972, § 4.

43-404 Office of Juvenile Services; created; powers and duties.

(1) This subsection applies until July 1, 2014. There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of state juvenile correctional facilities and programs other than the secure youth confinement facility which is under the control of the Department of Correctional Services. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

(2) This subsection applies beginning July 1, 2014. There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of the youth rehabilitation and treatment centers. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

Source: Laws 1994, LB 988, § 10; Laws 1996, LB 1044, § 960; R.S.Supp., 1996, § 83-925.02; Laws 1998, LB 1073, § 36; Laws 2007, LB296, § 109; Laws 2013, LB561, § 26.

43-405 Office of Juvenile Services; administrative duties.

The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, treatment, rehabilitation, transfer, discharge, evaluation until October 1, 2013, and parole until July 1, 2014, of juveniles placed with or committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles placed with or committed to facilities or programs of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and submit electronically an annual report of its findings to the Legislature. For 2012, 2013, and 2014, the office shall also provide an electronic copy of the report to the Health and Human Services Committee of the Legislature on or before September 15. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, the savings realized through reductions in commitments, placements, and evaluations, and information regarding the collaboration required by section 83-101;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(8) Coordinate educational, vocational, and social counseling;

(9) Until July 1, 2014, coordinate community-based services for juveniles and their families;

(10) Until July 1, 2014, supervise and coordinate juvenile parole and after-care services; and

(11) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 37; Laws 2012, LB782, § 44; Laws 2012, LB972, § 5; Laws 2012, LB1160, § 12; Laws 2013, LB222, § 7; Laws 2013, LB561, § 27.

43-406 Office of Juvenile Services; treatment programs, services, and systems; requirements.

The Office of Juvenile Services shall utilize:

(1) Risk and needs assessment instruments for use in determining the level of treatment for the juvenile;

(2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment. The process shall provide for a balance of accountability, public safety, and treatment;

(3) Case management for all juveniles committed to the office;

(4) Until July 1, 2014, a purchase-of-care system which will facilitate the development of a statewide community-based array of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of the federal Social Security Act, as amended, medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services. Services shall be offered and delivered on a regional basis;

(5) Until October 1, 2013, community-based evaluation programs, supplemented by one or more residential evaluation programs. A residential evaluation program shall be provided in a county containing a city of the metropolitan class. Community-based evaluation services shall replace the residential evaluation services available at the Youth Diagnostic and Rehabilitation Center by December 31, 1999; and

(6) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

Source: Laws 1994, LB 988, § 15; Laws 1995, LB 371, § 27; Laws 1996, LB 1141, § 1; Laws 1997, LB 307, § 229; Laws 1997, LB 882, § 12; R.S.Supp.,1997, § 83-925.07; Laws 1998, LB 1073, § 38; Laws 2013, LB561, § 28.

43-407 Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent; implement evidence-based practices, policies, and procedures; report; contents; Executive Board of Legislative Council; powers.

(1) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan. The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the juvenile may be transferred to a program or facility if the treatment and security needs of the juvenile can be met. The assessment process shall include involvement of both private and public sector behavioral health providers. The selection of the treatment venue for each juvenile shall include individualized case planning and incorporate the goals of the juvenile justice system pursuant to section 43-402. Juveniles committed to the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva who are transferred to alternative settings for treatment remain committed to the Department of Health and Human Services and the Office of Juvenile Services until discharged from such custody. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification require-

ments, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on May 25, 2007, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

(2) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan. The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the Office of Juvenile Services may arrange for such treatment to be provided at the Hastings Regional Center or may transition the juvenile to another inpatient or subacute residential treatment facility in the State of Nebraska. Except in a case requiring emergency admission to an inpatient facility, the juvenile shall not be discharged by the Office of Juvenile Services until the juvenile has been returned to the court for a review of his or her conditions of probation and the juvenile has been transitioned to the clinically appropriate level of care. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January

1, 2013, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

(3)(a) The Office of Juvenile Services shall begin implementing evidence-based practices, policies, and procedures by January 15, 2016, as determined by the office. Thereafter, on November 1 of each year, the office shall submit to the Governor, the Legislature, and the Chief Justice of the Supreme Court, a comprehensive report on its efforts to implement evidence-based practices. The report to the Legislature shall be by electronic transmission. The report may be attached to preexisting reporting duties. The report shall include at a minimum:

(i) The percentage of juveniles being supervised in accordance with evidence-based practices;

(ii) The percentage of state funds expended by each respective department for programs that are evidence-based, and a list of all programs which are evidence-based;

(iii) Specification of supervision policies, procedures, programs, and practices that were created, modified, or eliminated; and

(iv) Recommendations of the office for any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based and community organizations.

(b) Each report and executive summary shall be available to the general public on the web site of the office.

(c) The Executive Board of the Legislative Council may request the Consortium for Crime and Justice Research and Juvenile Justice Institute at the University of Nebraska at Omaha to review, study, and make policy recommendations on the reports assigned by the executive board.

Source: Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4; Laws 2013, LB561, § 29; Laws 2014, LB464, § 27.

Operative date July 18, 2014.

Cross References

Special Education Act, see section 79-1110.

43-408 Office of Juvenile Services; committing court; determination of placement and treatment services; review status; when.

(1)(a) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013, and to all juveniles committed to the Office of Juvenile Services for community supervision prior to October 1, 2013. Whenever any juvenile is committed to the Office of Juvenile Services, to any facility operated by the Office of Juvenile Services, or to the custody of the Administrator of the Office of Juvenile Services, a superintendent of a facility, or an administrator of a program, the juvenile is deemed committed to the Office of Juvenile Services. Juveniles committed to the Office of Juvenile Services shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(b) The committing court shall order the initial level of treatment for a juvenile committed to the Office of Juvenile Services. Prior to determining the

initial level of treatment for a juvenile, the court may solicit a recommendation regarding the initial level of treatment from the Office of Juvenile Services. Under this subsection, the committing court shall not order a specific placement for a juvenile. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services until such time that the juvenile is discharged from the Office of Juvenile Services. The court shall conduct review hearings every six months, or at the request of the juvenile, for any juvenile committed to the Office of Juvenile Services who is placed outside his or her home, except for a juvenile residing at a youth rehabilitation and treatment center. The court shall determine whether an out-of-home placement made by the Office of Juvenile Services is in the best interests of the juvenile, with due consideration being given by the court to public safety. If the court determines that the out-of-home placement is not in the best interests of the juvenile, the court may order other treatment services for the juvenile.

(c) After the initial level of treatment is ordered by the committing court, the Office of Juvenile Services shall provide treatment services which conform to the court's level of treatment determination. Within thirty days after making an actual placement, the Office of Juvenile Services shall provide the committing court with written notification of where the juvenile has been placed. At least once every six months thereafter, until the juvenile is discharged from the care and custody of the Office of Juvenile Services, the office shall provide the committing court with written notification of the juvenile's actual placement and the level of treatment that the juvenile is receiving.

(d) For transfer hearings, the burden of proof to justify the transfer is on the Office of Juvenile Services, the standard of proof is clear and convincing evidence, and the strict rules of evidence do not apply. Transfers of juveniles from one place of treatment to another are subject to section 43-251.01 and to the following:

(i) Except as provided in subdivision (d)(ii) of this subsection, if the Office of Juvenile Services proposes to transfer the juvenile from a less restrictive to a more restrictive place of treatment, a plan outlining the proposed change and the reasons for the proposed change shall be presented to the court which committed the juvenile. Such change shall occur only after a hearing and a finding by the committing court that the change is in the best interests of the juvenile, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel;

(ii) The Office of Juvenile Services may make an immediate temporary change without prior approval by the committing court only if the juvenile is in a harmful or dangerous situation, is suffering a medical emergency, is exhibiting behavior which warrants temporary removal, or has been placed in a non-state-owned facility and such facility has requested that the juvenile be removed. Approval of the committing court shall be sought within fifteen days of making an immediate temporary change, at which time a hearing shall occur before the court. The court shall determine whether it is in the best interests of the juvenile to remain in the new place of treatment, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel; and

(iii) If the proposed change seeks to transfer the juvenile from a more restrictive to a less restrictive place of treatment or to transfer the juvenile from the juvenile's current place of treatment to another which has the same level of

restriction as the current place of treatment, the Office of Juvenile Services shall notify the juvenile, the juvenile's parents, custodian, or legal guardian, the committing court, the county attorney, the counsel for the juvenile, and the guardian ad litem of the proposed change. The juvenile has fifteen days after the date of the notice to request an administrative hearing with the Office of Juvenile Services, at which time the Office of Juvenile Services shall determine whether it is in the best interests of the juvenile for the proposed change to occur, with due consideration being given by the office to public safety. The juvenile may be represented by counsel at the juvenile's own expense. If the juvenile is aggrieved by the administrative decision of the Office of Juvenile Services, the juvenile may appeal that decision to the committing court within fifteen days after the Office of Juvenile Services' decision. At the hearing before the committing court, the juvenile has the right to be represented by counsel.

(e) If a juvenile is placed in detention after the initial level of treatment is determined by the committing court, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered as a treatment service.

(f) The committing court's review of a change of place of treatment pursuant to this subsection does not apply to parole revocation hearings.

(2)(a) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. Whenever any juvenile is committed to the Office of Juvenile Services, the juvenile shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(b) The committing court shall order placement at a youth rehabilitation and treatment center for a juvenile committed to the Office of Juvenile Services. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services for the purpose of reviewing the juvenile's probation upon discharge from the care and custody of the Office of Juvenile Services.

(c) If a juvenile is placed in detention while awaiting placement at a youth rehabilitation and treatment center and the placement has not occurred within fourteen days, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered a treatment service.

Source: Laws 1996, LB 1044, § 962; R.S.Supp.,1996, § 83-925.12; Laws 1998, LB 1073, § 40; Laws 2001, LB 598, § 1; Laws 2006, LB 1113, § 40; Laws 2013, LB561, § 30.

43-410 Juvenile absconding; authority to apprehend.

(1) This subsection applies until July 1, 2014. Any peace officer, juvenile parole officer, or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from a placement for evaluation or commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the facility or program or an appropriate juvenile detention facility or staff secure juvenile facility. For purposes of this subsection, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles housed at a facility or program operated directly by the office or

security staff who has received training in apprehension techniques and procedures.

(2)(a) This subsection applies beginning July 1, 2014. Any peace officer or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the youth rehabilitation and treatment center or an appropriate juvenile detention facility or staff secure juvenile facility.

(b) For purposes of this subsection, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles at a youth rehabilitation and treatment center or security staff who has received training in apprehension techniques and procedures.

Source: Laws 1998, LB 1073, § 42; Laws 2013, LB561, § 31.

43-412 Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice of discharge.

(1) Every juvenile committed to the Office of Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant to subsection (3) of section 29-2204 shall remain committed until he or she attains the age of nineteen or is legally discharged.

(2) Upon attainment of the age of nineteen or absent a continuing order of intensive supervised probation, discharge of any juvenile pursuant to the rules and regulations shall be a complete release from all penalties incurred by conviction or adjudication of the offense for which he or she was committed.

(3) The Office of Juvenile Services shall provide the committing court, Office of Probation Administration, county attorney, defense attorney, if any, and guardian ad litem, if any, with written notification of the juvenile's discharge within thirty days prior to a juvenile being discharged from the care and custody of the office.

Source: Laws 1901, c. 51, § 11, p. 407; Laws 1903, c. 69, § 2, p. 369; R.S.1913, § 7379; C.S.1922, § 7038; C.S.1929, § 83-1109; R.S. 1943, § 83-472; Laws 1969, c. 817, § 80, p. 3111; Laws 1974, LB 992, § 1; Laws 1993, LB 31, § 44; Laws 1994, LB 988, § 35; Laws 1996, LB 1044, § 956; R.S.Supp.,1996, § 83-472; Laws 1998, LB 1073, § 44; Laws 2011, LB463, § 12; Laws 2013, LB561, § 32.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

43-413 Evaluations authorized.

(1) This section applies to all juveniles placed with the Office of Juvenile Services for evaluation prior to October 1, 2013. A court may, pursuant to section 43-281, place a juvenile with the Office of Juvenile Services or the Department of Health and Human Services for an evaluation to aid the court in the disposition.

(2) A juvenile convicted as an adult shall be placed with the Office of Juvenile Services for evaluation prior to sentencing as provided by subsection (3) of section 29-2204.

(3) All juveniles shall be evaluated prior to commitment to the Office of Juvenile Services unless the court finds that (a) there has been a substantially equivalent evaluation within the last twelve months that makes reevaluation unnecessary or (b) an addendum to a previous evaluation rather than a reevaluation would be appropriate. The court shall not commit such juvenile to the temporary custody of the Office of Juvenile Services prior to disposition. The office may place a juvenile in residential or nonresidential community-based evaluation services for purposes of evaluation to assist the court in determining the initial level of treatment for the juvenile.

(4) During any period of detention or evaluation prior to adjudication, costs incurred on behalf of a juvenile shall be paid as provided in section 43-290.01.

Source: Laws 1969, c. 814, § 2, p. 3060; Laws 1973, LB 563, § 50; Laws 1993, LB 31, § 49; Laws 1994, LB 988, § 38; R.S.1943, (1994), § 83-4,101; Laws 1998, LB 1073, § 45; Laws 2001, LB 640, § 1; Laws 2013, LB561, § 33; Laws 2014, LB464, § 28.
Operative date July 18, 2014.

43-414 Office of Juvenile Services; evaluation powers.

This section applies to all juveniles placed with the Office of Juvenile Services for evaluation prior to October 1, 2013. Each juvenile placed for evaluation with the Office of Juvenile Services shall be subjected to medical examination and evaluation as directed by the office.

Source: Laws 1969, c. 814, § 3, p. 3060; Laws 1973, LB 563, § 51; R.S.1943, (1994), § 83-4,102; Laws 1998, LB 1073, § 46; Laws 2013, LB561, § 34.

43-415 Evaluation; time limitation; extension; hearing.

This section applies to all juveniles placed with the Office of Juvenile Services for evaluation prior to October 1, 2013. A juvenile placed for evaluation with the Office of Juvenile Services shall be returned to the court upon the completion of the evaluation or at the end of thirty days, whichever comes first. When the office finds that an extension of the thirty-day period is necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. The court shall hold a hearing within ten days after the evaluation is completed and returned to the court by the office.

Source: Laws 1969, c. 814, § 5, p. 3060; Laws 1973, LB 563, § 52; Laws 1993, LB 31, § 50; Laws 1994, LB 988, § 39; R.S.1943, (1994), § 83-4,104; Laws 1998, LB 1073, § 47; Laws 2010, LB800, § 32; Laws 2013, LB561, § 35.

43-416 Office of Juvenile Services; parole powers; notice to committing court.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. This section shall not apply after June 30, 2014. The Office of Juvenile Services shall have administrative authority over the parole function for juveniles committed to a youth rehabilitation and treatment center and may (1) determine the time of release on parole of committed juveniles eligible for such release, (2) fix the conditions of parole, revoke parole, issue or authorize the issuance of detainers for the apprehension and detention of parole violators,

and impose other sanctions short of revocation for violation of conditions of parole, and (3) determine the time of discharge from parole. The office shall provide the committing court with written notification of the juvenile's discharge from parole within thirty days of a juvenile being discharged from the supervision of the office.

Source: Laws 1998, LB 1073, § 48; Laws 2011, LB463, § 13; Laws 2013, LB561, § 36.

43-417 Juvenile parole; considerations; discharge from youth rehabilitation and treatment center; considerations.

(1) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. In administering juvenile parole, the Office of Juvenile Services shall consider whether (a) the juvenile has completed the goals of his or her individual treatment plan or received maximum benefit from institutional treatment, (b) the juvenile would benefit from continued services under community supervision, (c) the juvenile can function in a community setting, (d) there is reason to believe that the juvenile will not commit further violations of law, and (e) there is reason to believe that the juvenile will comply with the conditions of parole.

(2) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. In determining whether to discharge a juvenile from a youth rehabilitation and treatment center, the Office of Juvenile Services shall consider whether (a) the juvenile has completed the goals of his or her individual treatment plan or received maximum benefit from institutional treatment, (b) the juvenile would benefit from continued services under community supervision, (c) the juvenile can function in a community setting, (d) there is reason to believe that the juvenile will not commit further violations of law, and (e) there is reason to believe that the juvenile will comply with the conditions of probation.

Source: Laws 1998, LB 1073, § 49; Laws 2013, LB561, § 37.

43-418 Parole violations; apprehension and detention; when.

(1) This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. Any juvenile parole officer or peace officer may apprehend and detain a juvenile who is on parole if the officer has reasonable cause to believe that a juvenile has violated or is about to violate a condition of his or her parole and that the juvenile will attempt to leave the jurisdiction or will place lives or property in danger unless the juvenile is detained. A juvenile parole officer may call upon a peace officer to assist him or her in apprehending and detaining a juvenile pursuant to this section. Such juvenile may be held in an appropriate juvenile facility pending hearing on the allegations.

(2) Juvenile parole officers may search for and seize contraband and evidence related to possible parole violations by a juvenile.

(3) Whether or not a juvenile is apprehended and detained by a juvenile parole officer or peace officer, if there is reason to believe that a juvenile has violated a condition of his or her parole, the Office of Juvenile Services may

issue the juvenile written notice of the alleged parole violations and notice of a hearing on the alleged parole violations.

Source: Laws 1998, LB 1073, § 50; Laws 2013, LB561, § 38.

43-419 Parole violation; preliminary hearing.

(1) This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. When a juvenile is apprehended and detained for an alleged violation of juvenile parole, he or she shall have a preliminary hearing as soon as practicable and no later than within seventy-two hours of being apprehended and detained. An impartial hearing officer shall conduct the preliminary hearing. The impartial hearing officer shall not be the juvenile parole officer alleging the violation of parole or a witness to the alleged violation. The impartial hearing officer may be an employee of the Office of Juvenile Services, including a supervisor or a juvenile parole officer, other than the parole officer filing the allegations.

(2) The juvenile parolee shall receive notice of the preliminary hearing, its purpose, and the alleged violations prior to the commencement of the hearing. The juvenile parolee may present relevant information, question adverse witnesses, and make a statement regarding the alleged parole violations. The rules of evidence shall not apply at such hearings and the hearing officer may rely upon any available information.

(3) The hearing officer shall determine whether there is probable cause to believe that the juvenile has violated a term or condition of his or her parole and shall issue that decision in writing. The decision shall either indicate there is not probable cause to believe that the juvenile parolee has violated the terms of his or her parole and dismiss the allegations and return the juvenile to parole supervision, or it shall indicate there is probable cause to believe that the juvenile has violated a condition of parole and state where the juvenile will be held pending the revocation hearing. The preliminary hearing officer shall consider the seriousness of the alleged violation, the public safety, and the best interests of the juvenile in determining where the juvenile shall be held pending the revocation hearing.

Source: Laws 1998, LB 1073, § 51; Laws 2013, LB561, § 39.

43-420 Hearing officer; requirements.

(1) This subsection applies until July 1, 2013. Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services, except a preliminary parole revocation hearing, shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

(2) This subsection applies beginning July 1, 2013. Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the

hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

Source: Laws 1998, LB 1073, § 52; Laws 2013, LB561, § 40.

43-421 Parole violations; rights of juvenile.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. When a juvenile is charged with being in violation of a condition of his or her parole, the juvenile is entitled to:

(1) Notice of the alleged violations of parole at least twenty-four hours prior to a hearing on the allegations. Such notice shall contain a concise statement of the purpose of the hearing and the factual allegations upon which evidence will be offered;

(2) A prompt hearing, within fourteen days after the preliminary hearing, if the juvenile is being held pending the hearing;

(3) Reasonable continuances granted by the hearing officer for the juvenile to prepare for the hearing;

(4) Have his or her parents notified of the hearing and allegations and have his or her parents attend the hearing;

(5) Be represented by legal counsel at the expense of the Department of Health and Human Services unless retained legal counsel is available to the juvenile. The department may contract with attorneys to provide such representation to juveniles charged with parole violations;

(6) Compel witnesses to attend, testify on his or her own behalf, present evidence, and cross-examine witnesses against him or her; and

(7) Present a statement on his or her own behalf.

Source: Laws 1998, LB 1073, § 53; Laws 2013, LB561, § 41.

43-422 Parole violation; waiver and admission.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. After receiving notice of the allegations of a violation of parole, being notified of the possible consequences, being informed of his or her rights pertaining to the hearing, and having an opportunity to confer with his or her parents or precommitment custodian and legal counsel, if desired, the juvenile may waive his or her right to a hearing and admit to the allegations. Such waiver and admission shall be in writing and submitted, together with a recommended disposition by the hearing officer, to the Administrator of the Office of Juvenile Services or his or her designee.

Source: Laws 1998, LB 1073, § 54; Laws 2013, LB561, § 42.

43-423 Parole violation hearing; requirements; appeal.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. At the parole violation hearing, the hearing officer shall again advise the juvenile of his or her rights and ensure that the juvenile has received the notice of allegations and the possible consequences. Strict rules of evidence

shall not be applied. The hearing officer shall determine whether the detention of the juvenile or other restrictions are necessary for the safety of the juvenile or for the public safety and shall indicate to what extent the juvenile will continue to be detained or restricted pending a final decision and administrative appeal. The hearing officer shall issue a written recommended disposition to the Administrator of the Office of Juvenile Services or his or her designee who shall promptly affirm, modify, or reverse the recommended disposition. The final decision of the administrator or his or her designee may be appealed pursuant to the Administrative Procedure Act. The Department of Health and Human Services shall be deemed to have acted within its jurisdiction if its action is in the best interests of the juvenile with due consideration being given to public safety. The appeal shall in all other respects be governed by the Administrative Procedure Act.

Source: Laws 1998, LB 1073, § 55; Laws 2013, LB561, § 43.

Cross References

Administrative Procedure Act, see section 84-920.

43-424 Assault, escape, or attempt to escape; documentation required; copy to court and county attorney.

If a juvenile assaults an employee of a youth rehabilitation and treatment center or another juvenile who has been committed to the youth rehabilitation and treatment center or escapes or attempts to escape from a youth rehabilitation and treatment center, the chief executive officer of the youth rehabilitation and treatment center shall document the assault, escape, or attempt to escape and send a copy of such documentation to the committing court and the county attorney of the county in which the committing court is located as soon as possible after the determination that such assault, escape, or attempt to escape has occurred. Such documentation may be offered as evidence presented at any hearing conducted pursuant to section 43-2,106.03.

Source: Laws 2012, LB972, § 6.

43-425 Community and Family Reentry Process; created; applicability; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.

(1) The Community and Family Reentry Process is hereby created. This process is created in order to reduce recidivism and promote safe and effective reentry for the juvenile and his or her family to the community from the juvenile justice system. This process applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013.

(2) While a juvenile is committed to a youth rehabilitation and treatment center, family team meetings shall be conducted in person or via videoconferencing at least once per month with the juvenile's support system to discuss the juvenile's transition back to the community. A juvenile's support system should be made up of any of the following: The juvenile himself or herself, any immediate family members or guardians, informal and formal supports, the juvenile's guardian ad litem appointed by the court, the juvenile's probation officer, Office of Juvenile Services personnel employed by the facility, and any additional personnel as appropriate. Once developed, individualized reentry

plans should be discussed at the family team meetings with the juvenile and other members of the juvenile's support system and shall include discussions on the juvenile's placement after leaving the facility. The probation officer and the Office of Juvenile Services personnel should discuss progress and needs of the juvenile and should help the juvenile follow his or her individual reentry plan to help with his or her transition back to the community.

(3) Within sixty days prior to discharge from a youth rehabilitation and treatment center, or as soon as possible if the juvenile's remaining time at the youth rehabilitation and treatment center is less than sixty days, an evidence-based risk screening and needs assessment should be conducted on the juvenile in order to determine the juvenile's risk of reoffending and the juvenile's individual needs upon reentering the community.

(4) Individualized reentry plans shall be developed with input from the juvenile and his or her support system in conjunction with a risk assessment process. Individualized reentry plans shall be finalized thirty days prior to the juvenile leaving the youth rehabilitation and treatment center or as soon as possible if the juvenile's remaining time at the center is less than thirty days. Individualized reentry plans should include specifics about the juvenile's placement upon return to the community, an education transition plan, a treatment plan with any necessary appointments being set prior to the juvenile leaving the center, and any other formal and informal supports for the juvenile and his or her family. The district probation officer and Office of Juvenile Services personnel shall review the individualized reentry plan and the expected outcomes as a result of the plan with the juvenile and his or her support system within thirty days prior to the juvenile's discharge from the center.

(5) The probation officer shall have contact with the juvenile and the juvenile's support system within forty-eight hours after the juvenile returns to the community and continue to assist the juvenile and the juvenile's support system in implementing and following the individualized reentry plan and monitoring the juvenile's risk through ongoing assessment updates.

(6) The Office of Probation Administration shall establish an evidence-based reentry process that utilizes risk assessment to determine the juvenile's supervision level upon return to the community. They shall establish supervision strategies based on risk levels of the juvenile and supervise accordingly, with ongoing reassessment to assist in determining eligibility for release from probation. The Office of Probation Administration shall develop a formal matrix of graduated sanctions to be utilized prior to requesting the county attorney to file for probation revocation. The Office of Probation Administration shall provide training to its workers on risk-based supervision strategies, motivational interviewing, family engagement, community-based resources, and other evidence-based reentry strategies.

Source: Laws 2013, LB561, § 54; Laws 2014, LB464, § 29.
Operative date July 18, 2014.

ARTICLE 5 ASSISTANCE FOR CERTAIN CHILDREN

Section

- 43-512. Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.
- 43-512.03. County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.

Section

- 43-512.07. Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.
- 43-512.11. Work and education programs; department; report.
- 43-512.12. Title IV-D child support order; review by Department of Health and Human Services; when.
- 43-512.15. Title IV-D child support order; modification; when; procedures.
- 43-512.16. Title IV-D child support order; review of health care coverage provisions.
- 43-512.17. Title IV-D child support order; financial information; disclosure; contents.
- 43-516. Department of Health and Human Services; participants in aid to dependent children; collect data and information.
- 43-517. Department of Health and Human Services; report; public record.
- 43-534. Family policy; annual statement required.
- 43-536. Child care reimbursement; market rate survey; adjustment of rate; participation in quality rating and improvement system; effect.

43-512 Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work

experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs. Income and assets described in section 68-1201 shall not be included in determination of need under this section.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child, cash medical support as defined in section 42-369, health care coverage as defined in section 44-3,144, and medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp.,1941, § 43-512; R.S.1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 79, § 5, p. 240; Laws 1951, c. 130, § 1, p. 549; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 522, § 13; Laws 1982, LB 942, § 3; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007, LB296, § 115; Laws 2007, LB351, § 2; Laws 2009, LB288, § 7; Laws 2014, LB359, § 2.
Effective date July 18, 2014.

43-512.03 County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.

(1) The county attorney or authorized attorney shall:

(a) On request by the Department of Health and Human Services as described in subsection (2) of this section or when the investigation or application filed under section 43-512 or 43-512.02 justifies, file a complaint against a nonsupporting party in the district, county, or separate juvenile court praying for an order for child or medical support in cases when there is no existing child or medical support order. After notice and hearing, the court shall adjudicate the child and medical support liability of either party and enter an order accordingly;

(b) Enforce child, spousal, and medical support orders by an action for income withholding pursuant to the Income Withholding for Child Support Act;

(c) In addition to income withholding, enforce child, spousal, and medical support orders by other civil actions or administrative actions, citing the defendant for contempt, or filing a criminal complaint;

(d) Establish paternity and collect child and medical support on behalf of children born out of wedlock; and

(e) Carry out sections 43-512.12 to 43-512.18.

(2) The department may periodically review cases of individuals receiving enforcement services and make referrals to the county attorney or authorized attorney.

(3) In any action brought by or intervened in by a county attorney or authorized attorney under the Income Withholding for Child Support Act, the License Suspension Act, the Uniform Interstate Family Support Act, or sections 42-347 to 42-381, 43-290, 43-512 to 43-512.18, 43-1401 to 43-1418, and 43-3328 to 43-3339, such attorneys shall represent the State of Nebraska.

(4) The State of Nebraska shall be a real party in interest in any action brought by or intervened in by a county attorney or authorized attorney for the

purpose of establishing paternity or securing, modifying, suspending, or terminating child or medical support or in any action brought by or intervened in by a county attorney or authorized attorney to enforce an order for child, spousal, or medical support.

(5) Nothing in this section shall be construed to interpret representation by a county attorney or an authorized attorney as creating an attorney-client relationship between the county attorney or authorized attorney and any party or witness to the action, other than the State of Nebraska, regardless of the name in which the action is brought.

Source: Laws 1976, LB 926, § 5; Laws 1977, LB 425, § 3; Laws 1981, LB 345, § 3; Laws 1982, LB 522, § 14; Laws 1983, LB 371, § 15; Laws 1985, Second Spec. Sess., LB 7, § 68; Laws 1986, LB 600, § 12; Laws 1987, LB 37, § 1; Laws 1991, LB 457, § 7; Laws 1991, LB 715, § 8; Laws 1994, LB 1224, § 51; Laws 1995, LB 3, § 1; Laws 1996, LB 1044, § 158; Laws 1997, LB 229, § 36; Laws 1997, LB 307, § 60; Laws 1997, LB 752, § 98; Laws 2004, LB 1207, § 37; Laws 2009, LB288, § 8.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

License Suspension Act, see section 43-3301.

Uniform Interstate Family Support Act, see section 42-701.

43-512.07 Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.

(1) Any action, payment, aid, or assistance listed in this subsection shall constitute an assignment by operation of law to the Department of Health and Human Services of any right to spousal or medical support, when ordered by the court, and to child support, whether or not ordered by the court, which a person may have in his or her own behalf or on behalf of any other person for whom such person receives such payments, aid, or assistance:

(a) Application for and acceptance of one or more aid to dependent children payments by a parent, another relative, or a custodian;

(b) Receipt of aid by or on behalf of any dependent child as defined in section 43-504; or

(c) Receipt of aid from child welfare funds.

The assignment under this section is the right to support payments that become due while the person is receiving payments, aid, or assistance listed in this subsection. The department shall be entitled to retain such child, spousal, or other support up to the amount of payments, aid, or assistance provided to a recipient. For purposes of this section, the right to receive child support shall belong to the child and the assignment shall be effective as to any such support even if the recipient of the payments, aid, or assistance is not the same as the payee of court-ordered support.

(2) After notification of the State Disbursement Unit receiving the child, spousal, or other support payments made pursuant to a court order that the person for whom such support is ordered is a recipient of payments, aid, or assistance listed in subsection (1) of this section, the department shall also give notice to the payee named in the court order at his or her last-known address.

(3) Upon written or other notification from the department or from another state of such assignment of child, spousal, or other support payments, the State Disbursement Unit shall transmit the support payments received to the department or the other state without the requirement of a subsequent order by the court. The State Disbursement Unit shall continue to transmit the support payments for as long as the payments, aid, or assistance listed in subsection (1) of this section continues.

(4) Any court-ordered child, spousal, or other support remaining unpaid for the months during which such payments, aid, or assistance was made shall constitute a debt and a continuing assignment at the termination of payments, aid, or assistance listed in subsection (1) of this section, collectible by the department or other state as reimbursement for such payments, aid, or assistance. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When payments, aid, or assistance listed in subsection (1) of this section have ceased and upon notice by the department or the other state, the State Disbursement Unit shall continue to transmit to the department or the other state any support payments received in excess of the amount of support ordered for that specific calendar period until notified by the department or the other state that the debt has been paid in full.

Source: Laws 1976, LB 926, § 9; Laws 1981, LB 345, § 5; Laws 1985, Second Spec. Sess., LB 7, § 71; Laws 1986, LB 600, § 13; Laws 1987, LB 599, § 13; Laws 1991, LB 457, § 11; Laws 1993, LB 435, § 3; Laws 1995, LB 524, § 1; Laws 1996, LB 1044, § 161; Laws 1997, LB 307, § 63; Laws 2000, LB 972, § 18; Laws 2009, LB288, § 9.

43-512.11 Work and education programs; department; report.

The Department of Health and Human Services shall submit electronically an annual report, not later than February 1 of each year, to the Legislature regarding the effectiveness of programs established pursuant to subdivision (5)(a) of section 43-512. The report shall include, but not be limited to:

- (1) The number of program participants;
- (2) The number of program participants who become employed, whether such employment is full time or part time or subsidized or unsubsidized, and whether the employment was retained for at least thirty days;
- (3) Supportive services provided to participants in the program;
- (4) Grant reductions realized; and
- (5) A cost and benefit statement for the program.

Source: Laws 1988, LB 518, § 2; Laws 1996, LB 1044, § 162; Laws 2007, LB296, § 116; Laws 2012, LB782, § 45.

43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when.

(1) Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the

department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

(a) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or

(b) Health care coverage meeting the requirements of subsection (2) of section 42-369 is available to either party and the children do not have health care coverage other than the medical assistance program under the Medical Assistance Act.

Health care coverage cases may be modified within three years of entry of the order.

(2) Orders that are not addressed under subsection (1) of this section shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered unless the requesting party demonstrates a substantial change in circumstances that is expected to last for the applicable time period established by subdivision (1)(a) of this section. Such substantial change in circumstances may include, but is not limited to, change in employment, earning capacity, or income or receipt of an ongoing source of income from a pension, gift, or lottery winnings. An order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1)(a) of this section.

Source: Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54; Laws 2009, LB288, § 10; Laws 2010, LB712, § 25.

Cross References

Medical Assistance Act, see section 68-901.

43-512.15 Title IV-D child support order; modification; when; procedures.

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal

nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706, (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support, or (iii) the incarceration is a result of a conviction for a crime in which the child who is the subject of the child support order was victimized; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1)(a) and (b) of section 43-512.12 exists.

(2) The department, a county attorney, or an authorized attorney shall not in any case be responsible for reviewing or filing an application to modify child support for individuals incarcerated as described in subdivision (1)(b) of this section.

(3) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(4) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43; Laws 2009, LB288, § 11; Laws 2010, LB712, § 26.

43-512.16 Title IV-D child support order; review of health care coverage provisions.

The county attorney or authorized attorney shall review the health care coverage provisions contained in any child support order which is subject to review under section 43-512.12 and shall include in any application for modification a request that the court order health care coverage or cash medical support as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 17; Laws 2009, LB288, § 12.

43-512.17 Title IV-D child support order; financial information; disclosure; contents.

Any financial information provided to the Department of Health and Human Services, the county attorney, or the authorized attorney by either parent for the purpose of facilitating a modification proceeding under sections 43-512.12 to 43-512.18 may be disclosed to the other parties to the case or to the court. Financial information shall include the following:

(1) An affidavit of financial status provided by the party requesting review;

(2) An affidavit of financial status of the nonrequesting party provided by the nonrequesting party or by the requesting party at the request of the county attorney or authorized attorney;

(3) Supporting documentation such as state and federal income tax returns, paycheck stubs, W-2 forms, 1099 forms, bank statements, and other written evidence of financial status; and

(4) Information relating to health care coverage as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 18; Laws 1993, LB 523, § 11; Laws 1996, LB 1044, § 167; Laws 1996, LB 1296, § 23; Laws 1997, LB 307, § 68; Laws 2009, LB288, § 13.

43-516 Department of Health and Human Services; participants in aid to dependent children; collect data and information.

The Department of Health and Human Services shall collect the following data and information yearly:

(1) The total number of participants in the aid to dependent children program described in section 43-512 pursuing an associate degree;

(2) Graduation rates of such participants, the number of participants that are making satisfactory progress in their educational pursuits, and the length of time participants participate in education to fulfill their work requirement under the program;

(3) The monthly earnings, educational level attained, and employment status of such participants at six months and at twelve months after terminating participation in the aid to dependent children program; and

(4) A summary of activities performed by the department to promote postsecondary educational opportunities to participants in the aid to dependent children program.

Source: Laws 2012, LB842, § 2.

43-517 Department of Health and Human Services; report; public record.

(1) The Department of Health and Human Services shall provide a report to the Governor and the Legislature no later than December 1 each year regarding the data and information collected pursuant to section 43-516, including a summary of such data and information. The report submitted to the Legislature shall be submitted electronically.

(2) The data and information collected under such section shall be considered a public record under section 84-712.01.

Source: Laws 2012, LB842, § 3; Laws 2013, LB222, § 8.

43-534 Family policy; annual statement required.

Every department, agency, institution, committee, and commission of state government which is concerned or responsible for children and families shall submit, as part of the annual budget request of such department, agency, institution, committee, or commission, a comprehensive statement of the efforts such department, agency, institution, committee, or commission has taken to carry out the policy and principles set forth in sections 43-532 and 43-533. For 2012, 2013, and 2014, the Department of Health and Human Services shall provide an electronic copy of its statement submitted under this section to the Health and Human Services Committee of the Legislature on or before September 15. The statement shall include, but not be limited to, a listing of programs

provided for children and families and the priority of such programs, a summary of the expenses incurred in the provision and administration of services for children and families, the number of clients served by each program, and data being collected to demonstrate the short-term and long-term effectiveness of each program.

Source: Laws 1987, LB 637, § 3; Laws 2012, LB1160, § 13; Laws 2013, LB222, § 9.

43-536 Child care reimbursement; market rate survey; adjustment of rate; participation in quality rating and improvement system; effect.

In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates and (2) an applicable child care or early childhood education program, as defined in section 71-1954, that is participating in the quality rating and improvement system and has received a rating of step three or higher under the Step Up to Quality Child Care Act may be reimbursed at higher rates based upon the program's quality scale rating under the quality rating and improvement system.

Source: Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123; Laws 2011, LB464, § 1; Laws 2013, LB507, § 14.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

ARTICLE 9

CHILDREN COMMITTED TO THE DEPARTMENT

Section

43-905. Legal custody; care; placement; duties of department; contracts; payment for maintenance.

43-905 Legal custody; care; placement; duties of department; contracts; payment for maintenance.

(1) The Department of Health and Human Services shall have legal custody of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between siblings as provided in section 43-1311.02. The department is authorized to place such children in suitable families for adoption, foster care, or guardianship or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the legal custody and care of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Legal custody and care of and services by the department shall never extend beyond the age of majority, except that (a) services by the department to a child shall continue until the child reaches the age of twenty-one if the child is in the bridge to independence program as provided in the Young Adult Bridge to Independence Act and (b) beginning January 1, 2014, coverage for health care and related services under medical assistance in accordance with section 68-911 may be extended as provided under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013, for medicaid coverage for individuals under twenty-six years of age as allowed pursuant to such act.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents would be a suitable home. The legal custody and care of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department may provide subsidies to adoptive and guardianship families subject to a hearing and court approval. The department may also provide and pay for the maintenance of the children in foster care, in boarding homes, or in institutions for care of children.

Source: Laws 1911, c. 62, § 5, p. 274; R.S.1913, § 7229; C.S.1922, § 6886; C.S.1929, § 83-504; Laws 1937, c. 202, § 1, p. 826; C.S.Supp.,1941, § 83-504; R.S.1943, § 83-243; Laws 1945, c. 246, § 1, p. 779; Laws 1951, c. 325, § 1, p. 1097; Laws 1953, c. 344, § 1, p. 1118; Laws 1957, c. 387, § 1, p. 1345; Laws 1959, c. 443, § 1, p. 1491; Laws 1961, c. 415, § 32, p. 1261; Laws 1965, c. 245, § 1, p. 695; Laws 1967, c. 248, § 4, p. 657; Laws 1969, c. 349, § 1, p. 1219; Laws 1977, LB 312, § 5; Laws 1978, LB 732, § 1; Laws 1992, LB 169, § 1; Laws 1996, LB 1044, § 185; Laws 1996, LB 1155, § 10; Laws 1998, LB 1073, § 29; Laws 2007, LB296, § 124; Laws 2011, LB177, § 2; Laws 2013, LB216, § 16; Laws 2013, LB269, § 2; Laws 2014, LB853, § 24; Laws 2014, LB908, § 6.

Effective date July 18, 2014.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB853, section 24, with LB908, section 6, to reflect all amendments.

Cross References

Foster Parent Liability and Property Damage Fund, see section 43-1320.
Young Adult Bridge to Independence Act, see section 43-4501.

ARTICLE 10 INTERSTATE COMPACT FOR JUVENILES

Section

- 43-1001. Repealed. Laws 2009, LB 237, § 5.
- 43-1002. Repealed. Laws 2009, LB 237, § 5.
- 43-1003. Repealed. Laws 2009, LB 237, § 5.
- 43-1004. Repealed. Laws 2009, LB 237, § 5.
- 43-1005. Expense of returning juvenile to state; how paid.

Section

- 43-1006. Repealed. Laws 2009, LB 237, § 5.
43-1007. Repealed. Laws 2009, LB 237, § 5.
43-1008. Repealed. Laws 2009, LB 237, § 5.
43-1009. Repealed. Laws 2009, LB 237, § 5.
43-1010. Repealed. Laws 2009, LB 237, § 5.
43-1011. Interstate Compact for Juveniles.

43-1001 Repealed. Laws 2009, LB 237, § 5.

43-1002 Repealed. Laws 2009, LB 237, § 5.

43-1003 Repealed. Laws 2009, LB 237, § 5.

43-1004 Repealed. Laws 2009, LB 237, § 5.

43-1005 Expense of returning juvenile to state; how paid.

The expense of returning juveniles to this state pursuant to the Interstate Compact for Juveniles shall be paid as follows:

(1) In the case of a runaway, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he or she is able to do so shall order that he or she pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile for his or her actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

(2) In the case of an escapee or absconder, if the juvenile is in the legal custody of the Department of Health and Human Services it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to his or her custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. In this subdivision appropriate court means the juvenile court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state, then the juvenile court of the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition, the person entitled to his or her legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns such juvenile; but if he or she is financially unable to pay all the expenses he or she may petition the juvenile court of the county of the petitioner's residence for an order arranging for the transportation as provided in subdivision (1) of this section. The court shall inquire summarily into the financial ability of the petitioner, and, if it finds he or she is unable to bear any or all of the expense, the court shall arrange for such transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of said expense as the court finds

he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

Source: Laws 1963, c. 248, § 5, p. 756; Laws 1996, LB 1044, § 192; Laws 2009, LB237, § 2.

Cross References

Interstate Compact for Juveniles, see section 43-1011.

43-1006 Repealed. Laws 2009, LB 237, § 5.

43-1007 Repealed. Laws 2009, LB 237, § 5.

43-1008 Repealed. Laws 2009, LB 237, § 5.

43-1009 Repealed. Laws 2009, LB 237, § 5.

43-1010 Repealed. Laws 2009, LB 237, § 5.

43-1011 Interstate Compact for Juveniles.

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal

justice officials; and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. “Bylaws” means: those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. “Compact Administrator” means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. “Compacting State” means: any state which has enacted the enabling legislation for this compact.

D. “Commissioner” means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. “Court” means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. “Deputy Compact Administrator” means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. “Interstate Commission” means: the Interstate Commission for Juveniles created by Article III of this compact.

H. “Juvenile” means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Nonoffender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. “Noncompacting state” means: any state which has not enacted the enabling legislation for this compact.

J. “Probation or Parole” means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. “Rule” means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. “State” means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

ARTICLE III

INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a

quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing any person of a crime, or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes;
7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.
2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.
3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.
4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.
5. To establish and maintain offices which shall be located within one or more of the compacting states.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, hire or contract for services of personnel.
8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.
9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

g. Providing "startup" rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice-chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the

Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;
2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;
3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this compact shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII
OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION
BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII
FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocat-

ed based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX

THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL
ENFORCEMENT

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefor determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the

compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Source: Laws 2009, LB237, § 1.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.

Interstate Compact for the Placement of Children, see section 43-1103.

ARTICLE 11

INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

Section

43-1101. Repealed. Laws 2009, LB 237, § 5.

43-1102. Repealed. Laws 2009, LB 237, § 5.

43-1103. Interstate Compact for the Placement of Children.

43-1101 Repealed. Laws 2009, LB 237, § 5.

43-1102 Repealed. Laws 2009, LB 237, § 5.

43-1103 Interstate Compact for the Placement of Children.

ARTICLE I. PURPOSE

The purpose of this Interstate Compact for the Placement of Children is to:

A. Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.

B. Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

C. Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.

D. Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.

E. Provide for uniform data collection and information sharing between member states under this compact.

F. Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact.

G. Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate.

H. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

ARTICLE II. DEFINITIONS

As used in this compact,

A. "Approved placement" means the public child-placing agency in the receiving state has determined that the placement is both safe and suitable for the child.

B. "Assessment" means an evaluation of a prospective placement by a public child-placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including, but not limited to, the child's safety and stability, health and well-being, and mental, emotional, and physical development. An assessment is only applicable to a placement by a public child-placing agency.

C. "Child" means an individual who has not attained the age of eighteen (18).

D. "Certification" means to attest, declare or swear to before a judge or notary public.

E. "Default" means the failure of a member state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or rules of the Interstate Commission.

F. "Home study" means an evaluation of a home environment conducted in accordance with the applicable requirements of the state in which the home is located, and documents the preparation and the suitability of the placement resource for placement of a child in accordance with the laws and requirements of the state in which the home is located.

G. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 11 section 1602(c).

H. "Interstate Commission for the Placement of Children" means the commission that is created under Article VIII of this compact and which is generally referred to as the Interstate Commission.

I. "Jurisdiction" means the power and authority of a court to hear and decide matters.

J. "Legal Risk Placement" ("Legal Risk Adoption") means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final

decree of adoption shall not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

K. "Member state" means a state that has enacted this compact.

L. "Noncustodial parent" means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.

M. "Nonmember state" means a state which has not enacted this compact.

N. "Notice of residential placement" means information regarding a placement into a residential facility provided to the receiving state including, but not limited to, the name, date, and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement, and the name and address of the facility in which the child will be placed. Notice of residential placement shall also include information regarding a discharge and any unauthorized absence from the facility.

O. "Placement" means the act by a public or private child-placing agency intended to arrange for the care or custody of a child in another state.

P. "Private child-placing agency" means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney that facilitates, causes, or is involved in the placement of a child from one state to another and that is not an instrumentality of the state or acting under color of state law.

Q. "Provisional placement" means a determination made by the public child-placing agency in the receiving state that the proposed placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

R. "Public child-placing agency" means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes, or is involved in the placement of a child from one state to another.

S. "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought.

T. "Relative" means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

U. "Residential Facility" means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities.

V. "Rule" means a written directive, mandate, standard, or principle issued by the Interstate Commission promulgated pursuant to Article XI of this compact that is of general applicability and that implements, interprets, or

prescribes a policy or provision of the compact. "Rule" has the force and effect of an administrative rule in a member state, and includes the amendment, repeal, or suspension of an existing rule.

W. "Sending state" means the state from which the placement of a child is initiated.

X. "Service member's permanent duty station" means the military installation where an active duty Armed Services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

Y. "Service member's state of legal residence" means the state in which the active duty Armed Services member is considered a resident for tax and voting purposes.

Z. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory of the United States.

AA. "State court" means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency, or status offenses of individuals who have not attained the age of eighteen (18).

BB. "Supervision" means monitoring provided by the receiving state once a child has been placed in a receiving state pursuant to this compact.

ARTICLE III. APPLICABILITY

A. Except as otherwise provided in Article III, Section B, this compact shall apply to:

1. The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state, provided, however, that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to placement.

2. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

a. the child is being placed in a residential facility in another member state and is not covered under another compact; or

b. the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.

3. The interstate placement of any child by a public child-placing agency or private child-placing agency as defined in this compact as a preliminary step to a possible adoption.

B. The provisions of this compact shall not apply to:

1. The interstate placement of a child in a custody proceeding in which a public child-placing agency is not a party, provided the placement is not intended to effectuate an adoption.

2. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement provided, however, that the placement is not intended to effectuate an adoption.

3. The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.

4. The placement of a child, not subject to Article III, Section A, into a residential facility by his or her parent.

5. The placement of a child with a noncustodial parent provided that:

a. The noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child; and

b. The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

c. The court in the sending state dismisses its jurisdiction in interstate placements in which the public child-placing agency is a party to the proceeding.

6. A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.

7. Cases in which a U.S. citizen child living overseas with his family, at least one of whom is in the U.S. Armed Services, and who is stationed overseas, is removed and placed in a state.

8. The sending of a child by a public child-placing agency or a private child-placing agency for a visit as defined by the rules of the Interstate Commission.

C. For purposes of determining the applicability of this compact to the placement of a child with a family in the Armed Services, the public child-placing agency or private child-placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

D. Nothing in this compact shall be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts, including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The Interstate Commission may in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

ARTICLE IV. JURISDICTION

A. Except as provided in Article IV, Section H, and Article V, Section B, paragraph two and three, concerning private and independent adoptions, and in interstate placements in which the public child-placing agency is not a party to a custody proceeding, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.

B. When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

C. In cases that are before courts and subject to this compact, the taking of testimony for hearings before any judicial officer may occur in person or by telephone, audio-video conference, or such other means as approved by the rules of the Interstate Commission; and Judicial officers may communicate with other judicial officers and persons involved in the interstate process as may be permitted by their Canons of Judicial Conduct and any rules promulgated by the Interstate Commission.

D. In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child-placing agency in the receiving state; or

2. The child is adopted; or

3. The child reaches the age of majority under the laws of the sending state; or

4. The child achieves legal independence pursuant to the laws of the sending state; or

5. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state; or

6. An Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or

7. The public child-placing agency of the sending state requests termination and has obtained the concurrence of the public child-placing agency in the receiving state.

E. When a sending state court terminates its jurisdiction, the receiving state child-placing agency shall be notified.

F. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime, or behavior involving a child as defined by the laws of the receiving state committed by the child in the receiving state which would be a violation of its laws.

G. Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

H. The substantive laws of the state in which an adoption will be finalized shall solely govern all issues relating to the adoption of the child and the court in which the adoption proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating to the adoption, except:

1. when the child is a ward of another court that established jurisdiction over the child prior to the placement; or

2. when the child is in the legal custody of a public agency in the sending state; or

3. when a court in the sending state has otherwise appropriately assumed jurisdiction over the child, prior to the submission of the request for approval of placement.

I. A final decree of adoption shall not be entered in any jurisdiction until the placement is authorized as an “approved placement” by the public child-placing agency in the receiving state.

ARTICLE V. PLACEMENT EVALUATION

A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state, the public child-placing agency shall provide a written request for assessment to the receiving state.

B. For placements by a private child-placing agency, a child may be sent or brought, or caused to be sent or brought, into a receiving state, upon receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child-placing agency. The required content to accompany a request for approval shall include all of the following:

1. A request for approval identifying the child, the birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval; and

2. The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state, or, where permitted, the laws of the state where the adoption will be finalized; and

3. Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where permitted the laws of the state where finalization of the adoption will occur; and

4. A home study; and

5. An acknowledgment of legal risk signed by the prospective adoptive parents.

C. The sending state and the receiving state may request additional information or documents prior to finalization of an approved placement, but they may not delay travel by the prospective adoptive parents with the child if the required content for approval has been submitted, received, and reviewed by the public child-placing agency in both the sending state and the receiving state.

D. Approval from the public child-placing agency in the receiving state for a provisional or approved placement is required as provided for in the rules of the Interstate Commission.

E. The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in the rules of the Interstate Commission.

F. Upon receipt of a request from the public child-placing agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child-placing agency of the sending state may request a determination for a provisional placement.

G. The public child-placing agency in the receiving state may request from the public child-placing agency or the private child-placing agency in the sending state, and shall be entitled to receive supporting or additional information necessary to complete the assessment or approve the placement.

H. The public child-placing agency in the receiving state shall approve a provisional placement and complete or arrange for the completion of the assessment within the timeframes established by the rules of the Interstate Commission.

I. For a placement by a private child-placing agency, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state, unless the adoption is finalized in the sending state.

J. The Interstate Commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

ARTICLE VI. PLACEMENT AUTHORITY

A. Except as otherwise provided in this compact, no child subject to this compact shall be placed into a receiving state until approval for such placement is obtained.

B. If the public child-placing agency in the receiving state does not approve the proposed placement then the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the Interstate Commission. Such determination is not subject to judicial review in the sending state.

C. If the proposed placement is not approved, any interested party shall have standing to seek an administrative review of the receiving state's determination.

1. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state pursuant to its applicable administrative procedures act.

2. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be deemed approved, provided, however, that all administrative or judicial remedies have been exhausted or the time for such remedies has passed.

ARTICLE VII. PLACING AGENCY RESPONSIBILITY

A. For the interstate placement of a child made by a public child-placing agency or state court:

1. The public child-placing agency in the sending state shall have financial responsibility for:

a. the ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state; and

b. as determined by the public child-placing agency in the sending state, services for the child beyond the public services for which the child is eligible in the receiving state.

2. The receiving state shall only have financial responsibility for:

a. any assessment conducted by the receiving state; and

b. supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child-placing agencies of the receiving and sending state.

3. Nothing in this provision shall prohibit public child-placing agencies in the sending state from entering into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.

B. For the placement of a child by a private child-placing agency preliminary to a possible adoption, the private child-placing agency shall be:

1. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption.

2. Financially responsible for the child absent a contractual agreement to the contrary.

C. The public child-placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the Interstate Commission.

D. The public child-placing agency in the receiving state shall provide, or arrange for the provision of, supervision and services for the child, including timely reports, during the period of the placement.

E. Nothing in this compact shall be construed as to limit the authority of the public child-placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorizing the provision of supervision or services by a licensed agency during the period of placement.

F. Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and Interstate Commission activities, through the creation of an advisory council or use of an existing body or board.

G. Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the Interstate Commission.

H. The public child-placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., for placements subject to the provisions of this compact, prior to placement.

I. With the consent of the Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

**ARTICLE VIII. INTERSTATE COMMISSION
FOR THE PLACEMENT OF CHILDREN**

The member states hereby establish, by way of this compact, a commission known as the "Interstate Commission for the Placement of Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a joint commission of the member states and shall have the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of the member states.

B. Consist of one commissioner from each member state who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program. The appointed commissioner shall have the legal authority to vote on policy related matters governed by this compact binding the state.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state.

4. A representative may delegate voting authority to another person from their state for a specified meeting.

C. In addition to the commissioners of each member state, the Interstate Commission shall include persons who are members of interested organizations as defined in the bylaws or rules of the Interstate Commission. Such members shall be ex officio and shall not be entitled to vote on any matter before the Interstate Commission.

D. Establish an executive committee which shall have the authority to administer the day-to-day operations and administration of the Interstate Commission. It shall not have the power to engage in rulemaking.

ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact.

B. To provide for dispute resolution among member states.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, or actions.

D. To enforce compliance with this compact or the bylaws or rules of the Interstate Commission pursuant to Article XII of this compact.

E. To collect standardized data concerning the interstate placement of children subject to this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

F. To establish and maintain offices as may be necessary for the transacting of its business.

G. To purchase and maintain insurance and bonds.

H. To hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies, and rates of compensation.

I. To establish and appoint committees and officers, including, but not limited to, an executive committee as required by Article X of this compact.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose thereof.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, the judiciary, and state advisory councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate and provide education, training and public awareness regarding the interstate movement of children for officials involved in such activity.

Q. To maintain books and records in accordance with the bylaws of the Interstate Commission.

R. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

ARTICLE X. ORGANIZATION AND OPERATION
OF THE INTERSTATE COMMISSION

A. Bylaws

1. Within twelve months after the first Interstate Commission meeting, the Interstate Commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact.

2. The Interstate Commission's bylaws and rules shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

B. Meetings

1. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states shall call additional meetings.

2. Public notice shall be given by the Interstate Commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

a. relate solely to the Interstate Commission's internal personnel practices and procedures; or

b. disclose matters specifically exempted from disclosure by federal law; or

c. disclose financial or commercial information which is privileged, proprietary, or confidential in nature; or

d. involve accusing a person of a crime, or formally censuring a person; or

e. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one or more persons; or

f. disclose investigative records compiled for law enforcement purposes; or

g. specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

3. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission or by court order.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or other electronic communication.

C. Officers and Staff

1. The Interstate Commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The staff director shall serve as secretary to the Interstate Commission, but shall not have a vote. The staff director may hire and supervise such other staff as may be authorized by the Interstate Commission.

2. The Interstate Commission shall elect, from among its members, a chairperson and a vice-chairperson of the executive committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

D. Qualified Immunity, Defense and Indemnification

1. The Interstate Commission's staff director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

a. The liability of the Interstate Commission's staff director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

b. The Interstate Commission shall defend the staff director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state shall defend the commissioner of a member state in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable

basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

c. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedure acts as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule; and
2. Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available; and
3. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Rules promulgated by the Interstate Commission shall have the force and effect of administrative rules and shall be binding in the compacting states to the extent and in the manner provided for in this compact.

E. Not later than sixty days after a rule is promulgated, an interested person may file a petition in the U.S. District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

F. If a majority of the legislatures of the member states rejects a rule, those states may by enactment of a statute or resolution in the same manner used to adopt the compact cause that such rule shall have no further force and effect in any member state.

G. The existing rules governing the operation of the Interstate Compact on the Placement of Children superseded by this compact shall be null and void no less than twelve but no more than twenty-four months after the first meeting of the Interstate Commission created hereunder, as determined by the members during the first meeting.

H. Within the first twelve months of operation, the Interstate Commission shall promulgate rules addressing the following:

1. Transition rules
2. Forms and procedures
3. Timelines
4. Data collection and reporting
5. Rulemaking
6. Visitation
7. Progress reports/supervision
8. Sharing of information/confidentiality
9. Financing of the Interstate Commission
10. Mediation, arbitration, and dispute resolution
11. Education, training, and technical assistance
12. Enforcement
13. Coordination with other interstate compacts

I. Upon determination by a majority of the members of the Interstate Commission that an emergency exists:

1. The Interstate Commission may promulgate an emergency rule only if it is required to:

- a. Protect the children covered by this compact from an imminent threat to their health, safety and well-being; or
- b. Prevent loss of federal or state funds; or
- c. Meet a deadline for the promulgation of an administrative rule required by federal law.

2. An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

3. An emergency rule shall be promulgated as provided for in the rules of the Interstate Commission.

ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

A. Oversight

1. The Interstate Commission shall oversee the administration and operation of the compact.

2. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and the rules of the Interstate Commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules shall be binding in the compacting states to the extent and in the manner provided for in this compact.

3. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact.

4. The Interstate Commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in any proceedings. Failure to provide service of process to the Interstate Commission shall render any judgment, order or other determination, however so captioned or classified, void as to the Interstate Commission, this compact, its bylaws or rules of the Interstate Commission.

B. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of such mediation or dispute resolution shall be the responsibility of the parties to the dispute.

C. Enforcement

1. If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, its bylaws, or rules, the Interstate Commission may:

- a. Provide remedial training and specific technical assistance; or
- b. Provide written notice to the defaulting state and other member states, of the nature of the default and the means of curing the default. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; or
- c. By majority vote of the members, initiate against a defaulting member state legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal office, to enforce compliance with the provisions of the compact, its bylaws or rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees; or
- d. Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

ARTICLE XIII. FINANCING OF THE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved by its members each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the thirty-fifth state. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XV. WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same. The effective date of withdrawal shall be the effective date of the repeal of the statute.

3. The withdrawing state shall immediately notify the president of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall then notify the other member states of the withdrawing state's intent to withdraw.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the members of the Interstate Commission.

B. Dissolution of compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

B. Binding Effect of the compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XVIII. INDIAN TRIBES

Notwithstanding any other provision in this compact, the Interstate Commission may promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of the purposes of the compact as specified in Article I of this compact. The Interstate Commission shall make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.

Source: Laws 2009, LB237, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

Interstate Compact for Juveniles, see section 43-1011.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section
43-1230. International application of act.

43-1230 International application of act.

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) and subsection (c) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

(f) A court of this state shall have initial and continuing jurisdiction to make any determinations and to grant any relief set forth in subsection (d) of this section upon the motion or complaint seeking such, filed by any parent or custodian of a child who is the subject of a foreign court's custody determination and a habitual resident of Nebraska. The absence or dismissal, either voluntary or involuntary, of an action for the recognition and enforcement of a foreign court's custody determination under subsection (b) of this section shall in no way deprive the court of jurisdiction set forth in this subsection. Subsection (c) of section 43-1238 shall apply to any proceeding under this subsection.

This subsection shall be deemed remedial and shall apply to all cases pending on or before March 6, 2009, and to all cases initiated subsequent thereto.

Source: Laws 2003, LB 148, § 5; Laws 2007, LB341, § 13; Laws 2009, LB201, § 1.

ARTICLE 13 FOSTER CARE

(a) FOSTER CARE REVIEW ACT

| | |
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| Section | |
| 43-1301. | Terms, defined. |
| 43-1302. | Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties. |
| 43-1303. | Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; duties. |
| 43-1304. | Local foster care review boards; members; powers and duties. |
| 43-1305. | Local board; terms; vacancy. |
| 43-1306. | Repealed. Laws 2012, LB 998, § 20. |

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| Section | |
| 43-1307. | Child placed in foster care; court; duties; office; provide information to local board. |
| 43-1308. | Local board; powers and duties. |
| 43-1309. | Records; release; when. |
| 43-1310. | Records and information; confidential; unauthorized disclosure; penalty. |
| 43-1311. | Child removed from home; person or court in charge of child; duties. |
| 43-1311.01. | Child removed from home; notice to noncustodial parent and certain relatives; when; information provided; department; duties. |
| 43-1311.02. | Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties. |
| 43-1311.03. | Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents. |
| 43-1312. | Plan or permanency plan for foster child; contents; investigation; hearing. |
| 43-1312.01. | Placement of child; order granting guardianship; court retain jurisdiction over child; termination of guardianship; when; effect of guardianship. |
| 43-1313. | Review of dispositional order; when; procedure. |
| 43-1314. | Court review or hearing; right to participate; notice. |
| 43-1314.01. | Six-month case reviews; office; duties. |
| 43-1314.02. | Caregiver information form; development; provided to caregiver. |
| 43-1317. | Training for local board members. |
| 43-1318. | Act, how cited. |
| 43-1321. | Foster Care Review Office Cash Fund; created; use; investment. |

(a) FOSTER CARE REVIEW ACT

43-1301 Terms, defined.

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board means a local foster care review board created pursuant to section 43-1304;

(2) Office means the Foster Care Review Office created pursuant to section 43-1302;

(3) Foster care facility means any foster family home as defined in section 71-1901, residential child-caring agency as defined in section 71-1926, public agency, private agency, or any other person or entity receiving and caring for foster children;

(4) Foster care placements means all placements of juveniles described in section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child-placing agency as defined in section 71-1926 licensed by the Department of Health and Human Services;

(5) Person or court in charge of the child means (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement means the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit means the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child's family unit also includes the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Residential child-caring agency has the definition found in section 71-1926;

(9) Child-placing agency has the definition found in section 71-1926; and

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.

Source: Laws 1982, LB 714, § 1; Laws 1985, LB 255, § 40; Laws 1985, LB 447, § 36; Laws 1987, LB 239, § 1; Laws 1990, LB 1222, § 4; Laws 1996, LB 1044, § 194; Laws 1997, LB 307, § 75; Laws 2011, LB177, § 3; Laws 2012, LB998, § 3; Laws 2013, LB265, § 32.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-1302 Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.

(1)(a) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (i) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (ii) make policy recommendations.

(b) All equipment and effects of the State Foster Care Review Board on July 1, 2012, shall be transferred to the Foster Care Review Office, and all staff of the board, except the executive director and interim executive director, shall be transferred to the office. The State Foster Care Review Board shall terminate on July 1, 2012. Beginning on July 1, 2012, the data coordinator of the board, as such position existed prior to such date, shall serve as the executive director of the office until the Foster Care Advisory Committee hires an executive director as prescribed by this section. It is the intent of the Legislature that the staff of the board employed prior to July 1, 2012, shall continue to be employed by the office until such time as the executive director is hired by the committee.

(c) It is the intent of the Legislature that the funds appropriated to the State Foster Care Review Board be transferred to the Foster Care Review Office for FY2012-13.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a residential child-caring agency, a child-placing agency, or a court.

(b) The Governor shall appoint three members from a list of twelve local board members submitted by the Health and Human Services Committee of the Legislature, one member from a list of four persons with data analysis experience submitted by the Health and Human Services Committee of the Legislature, and one member from a list of four persons who are residents of the state and are representative of the public at large submitted by the Health and Human Services Committee of the Legislature. The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the initial members and members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appointments within thirty days after July 1, 2012. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies in the same manner as the original appointments to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1; Laws 2012, LB998, § 4; Laws 2013, LB265, § 33.

43-1303 Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; duties.

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, social security number, date of birth, gender, race, and religion;

(b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child;

(f) Case worker; and

(g) Permanency plan objective.

(2)(a) The office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vi) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, department, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. The report and recommendations submitted to the Legislature shall be submitted electronically. In addition, the office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met. The executive director shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular electronic updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year, beginning December 1, 2012, and shall be submitted electronically to the committee.

Source: Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1; Laws 2012, LB998, § 5; Laws 2013, LB222, § 10.

43-1304 Local foster care review boards; members; powers and duties.

There shall be local foster care review boards to conduct the foster care file audit case reviews of children in foster care placement and carry out other powers and duties given to such boards under the Foster Care Review Act. Members of local boards serving on July 1, 2012, shall continue to serve the unexpired portion of their terms. The executive director of the office shall select members to serve on local boards from a list of applications submitted to the office. Each local board shall consist of not less than four and not more than ten members as determined by the executive director. The members of the local board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the office, the Department of Health and Human Services, a residential child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

Source: Laws 1982, LB 714, § 4; Laws 1987, LB 239, § 3; Laws 1996, LB 1044, § 196; Laws 1999, LB 240, § 2; Laws 2012, LB998, § 6; Laws 2013, LB265, § 34.

43-1305 Local board; terms; vacancy.

All local board members shall be appointed for terms of three years. If a vacancy occurs on a local board, the executive director of the office shall appoint another person to serve the unexpired portion of the term. Appointments to fill vacancies on the local board shall be made in the same manner and subject to the same conditions as the initial appointments to such board. The term of each member shall expire on the second Monday in July of the appropriate year. Members shall continue to serve until a successor is appointed.

Source: Laws 1982, LB 714, § 5; Laws 1999, LB 240, § 3; Laws 2012, LB998, § 7.

43-1306 Repealed. Laws 2012, LB 998, § 20.

43-1307 Child placed in foster care; court; duties; office; provide information to local board.

(1) Each court which has placed a child in foster care shall send to the office (a) a copy of the plan or permanency plan, prepared by the person or court in charge of the child in accordance with section 43-1312, to effectuate rehabilitation of the foster child and family unit or permanent placement of the child and (b) a copy of the progress reports as they relate to the plan or permanency plan, including, but not limited to, the court order and the report and recommendations of the guardian ad litem.

(2) The office may provide the designated local board with copies of the information provided by the court under subsection (1) of this section.

Source: Laws 1982, LB 714, § 7; Laws 1998, LB 1041, § 37; Laws 2012, LB998, § 8.

43-1308 Local board; powers and duties.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the designated local board shall:

(a) Conduct a foster care file audit case review at least once every six months for the case of each child in a foster care placement to determine what efforts have been made to carry out the plan or permanency plan for rehabilitation of the foster child and family unit or for permanent placement of such child pursuant to section 43-1312;

(b) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the foster care file audit case review, its findings and recommendations regarding the efforts and progress made to carry out the plan or permanency plan established pursuant to section 43-1312 together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include whether there is a need for continued out-of-home placement, whether the current placement is safe and appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale considered in the foster care file audit case review, whether the grounds for termination of parental rights under section 43-292 appear to exist, and the date of the next foster care file audit case review by the designated local board;

(c) If the return of the child to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, place-

ment with a relative, or, as a last resort, another planned, permanent living arrangement; and

(d) Promote and encourage stability and continuity in foster care by discouraging unnecessary changes in the placement of foster children and by encouraging the recruitment of foster parents who may be eligible as adoptive parents.

(2) When the office or designated local board determines that the interests of a child in a foster care placement would be served thereby, the office or designated local board may request a court review hearing as provided for in section 43-1313.

Source: Laws 1982, LB 714, § 8; Laws 1985, LB 255, § 41; Laws 1990, LB 1222, § 7; Laws 1998, LB 1041, § 38; Laws 2012, LB998, § 9.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-1309 Records; release; when.

Upon the request of the office or designated local board, any records pertaining to a case assigned to such local board, or upon the request of the Department of Health and Human Services, any records pertaining to a case assigned to the department, shall be furnished to the office or designated local board or department by the agency charged with the child or any public official or employee of a political subdivision having relevant contact with the child. Upon the request of the office or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the office or designated local board as the court deems necessary to determine the physical, psychological, and sociological circumstances of such foster child.

Source: Laws 1982, LB 714, § 9; Laws 1990, LB 1222, § 8; Laws 1996, LB 1044, § 197; Laws 2012, LB998, § 10.

43-1310 Records and information; confidential; unauthorized disclosure; penalty.

All records and information regarding foster children and their parents or relatives in the possession of the office or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules and regulations adopted and promulgated by the Department of Health and Human Services or the office shall be a Class III misdemeanor.

Source: Laws 1982, LB 714, § 10; Laws 1990, LB 1222, § 9; Laws 1996, LB 1044, § 198; Laws 2012, LB998, § 11.

43-1311 Child removed from home; person or court in charge of child; duties.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall:

(1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;

(2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home;

(3) Subject the child to such further diagnosis and evaluation as is necessary;

(4) Require that the child attend the same school as prior to the foster care placement unless the person or court in charge determines that attending such school would not be in the best interests of the child; and

(5) Notify the Department of Health and Human Services to identify, locate, and provide written notification to adult relatives of the child as provided in section 43-1311.01.

Source: Laws 1982, LB 714, § 11; Laws 1985, LB 255, § 42; Laws 1998, LB 1041, § 39; Laws 2008, LB1014, § 44; Laws 2011, LB177, § 4.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-1311.01 Child removed from home; notice to noncustodial parent and certain relatives; when; information provided; department; duties.

(1) When notified pursuant to section 43-1311 or upon voluntary placement of a child, the Department of Health and Human Services shall, as provided in this section, identify, locate, and provide written notification of the removal of the child from his or her home, within thirty days after removal, to any noncustodial parent and to all grandparents, adult siblings, adult aunts, adult uncles, adult cousins, and adult relatives suggested by the child or the child's parents, except when that relative's history of family or domestic violence makes notification inappropriate. If the child is an Indian child as defined in section 43-1503, the child's extended family members as defined in such section shall be notified. Such notification shall include all of the following information:

(a) The child has been or is being removed from the custody of the parent or parents of the child;

(b) An explanation of the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(c) A description of the requirements for the relative to serve as a foster care provider or other type of care provider for the child and the additional services, training, and other support available for children receiving such care; and

(d) Information concerning the option to apply for guardianship assistance payments.

(2) The department shall investigate the names and locations of the relatives, including, but not limited to, asking the child in an age-appropriate manner about relatives important to the child and obtaining information regarding the location of the relatives.

(3) The department shall provide to the court, within thirty calendar days after removal of the child, the names and relationship to the child of all relatives contacted, the method of contact, and the responses received from the relatives.

Source: Laws 2011, LB177, § 6.

43-1311.02 Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties.

(1)(a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times.

(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and frequency of sibling visitation or ongoing interaction to be implemented by the department.

(3) Parties to the case may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(4) The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(6) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

Source: Laws 2011, LB177, § 7.

43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents.

(1) When a child placed in foster care turns sixteen years of age or enters foster care and is at least sixteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to adulthood. The transition proposal shall be personalized based on the child's needs. The transition proposal shall include, but not be limited to, the following needs:

- (a) Education;
- (b) Employment services and other workforce support;
- (c) Health and health care coverage, including the child's potential eligibility for medicaid coverage under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;
- (d) Financial assistance, including education on credit card financing, banking, and other services;
- (e) Housing;
- (f) Relationship development; and
- (g) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court.

(4) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(6) A child adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who is in an out-of-home placement shall receive information regarding the Young Adult Bridge to Independence Act and the bridge to independence program available under the act. The department shall create a clear and developmentally appropriate written notice discussing the rights of eligible young adults to participate in the program. The notice shall include information about eligibility and requirements to participate in the program, the extended services and support that young adults are eligible to receive under the program, and how young adults can be a part of the program. The notice shall also include information about the young adult's right to request a client-directed attorney to represent the young adult pursuant to section 43-4510 and the benefits and role of an attorney. The department shall disseminate

nate this information to all children who were adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who are in an out-of-home placement at sixteen years of age and yearly thereafter until nineteen years of age, and not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living. In addition to providing the written notice, not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living, a representative of the department shall explain the information contained in the notice to the child in person and the timeline necessary to avoid a lapse in services and support.

(7) On or before the date the child reaches nineteen years of age, the department shall provide the child with (a) a certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card and (b) all documentation required for enrollment in medicaid coverage for former foster care children as available under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013. All fees associated with securing the certified copy of the child's birth certificate shall be waived by the state.

Source: Laws 2011, LB177, § 8; Laws 2013, LB216, § 17; Laws 2013, LB269, § 3; Laws 2014, LB853, § 25.
Effective date July 18, 2014.

Cross References

Young Adult Bridge to Independence Act, see section 43-4501.

43-1312 Plan or permanency plan for foster child; contents; investigation; hearing.

(1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

- (a) The purpose for which the child has been placed in foster care;
- (b) The estimated length of time necessary to achieve the purposes of the foster care placement;
- (c) A description of the services which are to be provided in order to accomplish the purposes of the foster care placement;
- (d) The person or persons who are directly responsible for the implementation of such plan;
- (e) A complete record of the previous placements of the foster child; and
- (f) The name of the school the child shall attend as provided in section 43-1311.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department of Health and Human Services shall recommend termination of parental rights and referral for adoption, guardianship, placement with a relative, or, as a last resort, another planned permanent living arrangement. If the child is removed from his or her home, the department shall make reasonable efforts to accomplish

joint-sibling placement or sibling visitation or ongoing interaction between the siblings as provided in section 43-1311.02.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

- (a) Returned to the parent;
- (b) Referred to the state for filing of a petition for termination of parental rights;
- (c) Placed for adoption;
- (d) Referred for guardianship; or
- (e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

Source: Laws 1982, LB 714, § 12; Laws 1998, LB 1041, § 40; Laws 2008, LB1014, § 45; Laws 2011, LB177, § 5.

43-1312.01 Placement of child; order granting guardianship; court retain jurisdiction over child; termination of guardianship; when; effect of guardianship.

(1) If the permanency plan for a child established pursuant to section 43-1312 does not recommend return of the child to his or her parent or that the child be placed for adoption, the juvenile court may place the child in a guardianship in a relative home as defined in section 71-1901, in a kinship home as defined in section 71-1901, or with an individual as provided in section 43-285 if:

- (a) The child is a juvenile who has been adjudged to be under subdivision (3)(a) of section 43-247;
- (b) The child has been in the placement for at least six months;
- (c) The child consents to the guardianship, if the child is ten years of age or older; and
- (d) The guardian:
 - (i) Is suitable and able to provide a safe and permanent home for the child;
 - (ii) Has made a commitment to provide for the financial, medical, physical, and emotional needs of the child until the child reaches the age of majority or until the termination of extended guardianship assistance payments pursuant to section 43-4511 or 43-4514;
 - (iii) Has made a commitment to prepare the child for adulthood and independence; and
 - (iv) Agrees to give notice of any changes in his or her residential address or the residence of the child by filing a written document in the juvenile court file of the child.

(2) In the order granting guardianship, the juvenile court:

(a) Shall grant to the guardian such powers, rights, and duties with respect to the care, maintenance, and treatment of the child as the biological or adoptive parent of the child would have;

(b) May specify the frequency and nature of family time or contact between the child and his or her parents, if appropriate;

(c) May specify the frequency and nature of family time or contact between the child and his or her siblings, if appropriate; and

(d) Shall require that the guardian not return the child to the physical care and custody of the person from whom the child was removed without prior approval of the court.

(3) The juvenile court shall retain jurisdiction over the child for modification or termination of the guardianship order. The court shall discontinue permanency reviews and case reviews and shall relieve the Department of Health and Human Services of the responsibility of supervising the placement of the child. Notwithstanding the retention of juvenile court jurisdiction, the guardianship placement shall be considered permanent for the child.

(4) The child shall remain in the custody of the guardian unless the order creating the guardianship is modified by the court.

(5) Guardianships established under this section shall terminate on the child's nineteenth birthday unless the child is eligible for continued guardianship assistance payments under section 43-4511 or 43-4514 and an agreement is signed by the Department of Health and Human Services, the guardian, and the young adult, as defined in section 43-4503, to continue the guardianship assistance. The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian for the purpose of an extended guardianship shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(6) Upon the child's nineteenth birthday regardless of the existence of an agreement to extend the guardianship until the child's twenty-first birthday, the guardian shall no longer have the legal authority to make decisions on behalf of the child and shall have no more authority over the person or property of the child than a biological or adoptive parent would have over his or her child, absent consent from the child.

(7) A guardianship established under this section does not terminate the parent-child relationship, including:

(a) The right of the child to inherit from his or her parents;

(b) The right of the biological parents to consent to the child's adoption; and

(c) The responsibility of the parents to provide financial, medical, or other support as ordered by the court.

(8) The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Source: Laws 2014, LB908, § 8.

Effective date July 18, 2014.

43-1313 Review of dispositional order; when; procedure.

When a child is in foster care, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order

for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the office or designated local board concerning such child shall be included in the record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the office or local board requests a hearing in writing specifying the reasons for the review. Members of the office or local board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court.

Source: Laws 1982, LB 714, § 13; Laws 1990, LB 1222, § 10; Laws 2012, LB998, § 12.

43-1314 Court review or hearing; right to participate; notice.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review or hearing and the right of participation in all court reviews and hearings pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement. The Department of Health and Human Services or contract agency shall have the contact information for all child placements available for all courts to comply with the notification requirements found in this section. The department or contract agency shall each have one telephone number by which any court seeking to provide notice may obtain up-to-date contact information of all persons listed in subdivisions (2)(a) through (h) of this section. All contact information shall be up-to-date within seventy-two hours of any placement change.

(2) Notice shall be provided to all of the following parties that are applicable to the case: (a) The person charged with the care of such child; (b) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (c) the foster child if age fourteen or over; (d) the foster parent or parents of the foster child; (e) the guardian ad litem of the foster child; (f) the office and designated local board; (g) the preadoptive parent; and (h) the relative providing care for the child. Notice of all court reviews and hearings shall be mailed or personally delivered to the counsel or party, if the party is not represented by counsel, five full days prior to the review or hearing. The use of ordinary mail shall constitute sufficient compliance. Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative is a necessary party to the review or hearing.

(3) The court shall inquire into the well-being of the foster child by asking questions, if present at the hearing, of any willing foster parent, preadoptive parent, or relative providing care for the child.

Source: Laws 1982, LB 714, § 14; Laws 1985, LB 255, § 43; Laws 1988, LB 948, § 1; Laws 1990, LB 1222, § 11; Laws 1998, LB 1041, § 41; Laws 2006, LB 1115, § 34; Laws 2011, LB648, § 2; Laws 2012, LB998, § 13.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-1314.01 Six-month case reviews; office; duties.

(1) The office shall be the only entity responsible for the conduct of periodic foster care file audit case reviews which shall be identified as reviews which meet the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. The office shall be fiscally responsible for any noncompliance sanctions imposed by the federal government related to the requirements for review outlined in the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(2) It is the intent of the Legislature that any six-month court review of a juvenile pursuant to sections 43-278 and 43-1313 shall be identified as a review which meets the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(3) The office may assist the Department of Health and Human Services as to eligibility under Title IV-E for state wards and eligibility for Supplemental Security Income, Supplemental Security Disability Income, Veterans Administration, or aid to families with dependent children benefits, for child support orders of the court, and for medical insurance other than medicaid.

Source: Laws 1996, LB 642, § 1; Laws 1997, LB 307, § 76; Laws 1999, LB 240, § 4; Laws 2012, LB998, § 14.

43-1314.02 Caregiver information form; development; provided to caregiver.

(1) The court shall provide a caregiver information form or directions on downloading such form from the Supreme Court Internet web site to the foster parent, preadoptive parent, guardian, or relative providing care for the child when giving notice of a court review described in section 43-1314. The form is to be dated and signed by the caregiver and shall, at a minimum, request the following:

- (a) The child's name, age, and date of birth;
- (b) The name of the caregiver, his or her telephone number and address, and whether the caregiver is a foster parent, preadoptive parent, guardian, or relative;
- (c) How long the child has been in the caregiver's care;
- (d) A current picture of the child;
- (e) The current status of the child's medical, dental, and general physical condition;
- (f) The current status of the child's emotional condition;
- (g) The current status of the child's education;
- (h) Whether or not the child is a special education student and the date of the last individualized educational plan;
- (i) A brief description of the child's social skills and peer relationships;
- (j) A brief description of the child's special interests and activities;
- (k) A brief description of the child's reactions before, during, and after visits;
- (l) Whether or not the child is receiving all necessary services;

(m) The date and place of each visit by the caseworker with the child;

(n) A description of the method by which the guardian ad litem has acquired information about the child; and

(o) Whether or not the caregiver can make a permanent commitment to the child if the child does not return home.

(2) A caregiver information form shall be developed by the Supreme Court. Such form shall be made a part of the record in each court that reviews the child's foster care proceedings.

Source: Laws 2007, LB457, § 1; Laws 2009, LB35, § 28.

43-1317 Training for local board members.

The office shall establish compulsory training for local board members which shall consist of initial training programs followed by periodic inservice training programs.

Source: Laws 1982, LB 714, § 17; Laws 2012, LB998, § 15.

43-1318 Act, how cited.

Sections 43-1301 to 43-1321 shall be known and may be cited as the Foster Care Review Act.

Source: Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2; Laws 2011, LB177, § 9; Laws 2014, LB908, § 7.
Effective date July 18, 2014.

43-1321 Foster Care Review Office Cash Fund; created; use; investment.

There is hereby created the Foster Care Review Office Cash Fund. The fund shall be administered by the Foster Care Review Office. The office shall remit revenue from the following sources to the State Treasurer for credit to the fund:

(1) Registration and other fees received for training, seminars, or conferences fully or partially sponsored or hosted by the office;

(2) Payments to offset printing, postage, and other expenses for books, documents, or other materials printed or published by the office; and

(3) Money received by the office as gifts, grants, reimbursements, or appropriations from any source intended for the purposes of the fund.

The fund shall be used for the administration of the Foster Care Review Office. The State Treasurer shall transfer any funds in the Foster Care Review Board Cash Fund on July 1, 2012, to the Foster Care Review Office Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 1194, § 9; Laws 1995, LB 7, § 38; Laws 2012, LB998, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 14
PARENTAL SUPPORT AND PATERNITY

Section

43-1411.01. Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

43-1411.01 Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

(1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile Code and the Parenting Act shall apply to such proceedings.

Source: Laws 1997, LB 229, § 38; Laws 1998, LB 1041, § 46; Laws 2004, LB 1207, § 40; Laws 2008, LB1014, § 46; Laws 2013, LB561, § 44.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

Parenting Act, see section 43-2920.

ARTICLE 15
NEBRASKA INDIAN CHILD WELFARE ACT

Section

43-1503. Terms, defined.

43-1503 Terms, defined.

For purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

(1) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

(2) Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent;

(3) Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;

(4) Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) Indian child's tribe means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) Indian organization means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1602(c);

(9) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(10) Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) Secretary means the Secretary of the Interior;

(12) Tribal court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; and

(13) Tribal service area means a geographic area in which tribal services and programs are provided to Native American people.

Source: Laws 1985, LB 255, § 3; Laws 1993, LB 121, § 216; Laws 1999, LB 475, § 3; Laws 2013, LB265, § 35.

ARTICLE 17

INCOME WITHHOLDING FOR CHILD SUPPORT ACT

Section

- 43-1701. Act, how cited.
 43-1702. Purpose of act.
 43-1703. Definitions, where found.
 43-1712.02. Monetary judgment, defined.
 43-1717. Support order, defined.
 43-1718.02. Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.
 43-1720. Notice to employer, payor, or obligor; contents.
 43-1722. Assignment; statement of amount.
 43-1723. Notice to employer or other payor; contents; compliance; effect.
 43-1724. Employer or other payor; failure to withhold and remit income; effect.
 43-1726. Notice to withhold income; termination; exception; procedure.
 43-1727. Income withholding notice; modification or revocation; notice.

43-1701 Act, how cited.

Sections 43-1701 to 43-1743 shall be known and may be cited as the Income Withholding for Child Support Act.

Source: Laws 1985, Second Spec. Sess., LB 7, § 21; Laws 1991, LB 457, § 17; Laws 1994, LB 1224, § 64; Laws 2000, LB 972, § 19; Laws 2010, LB712, § 27.

43-1702 Purpose of act.

It is the intent of the Legislature to encourage the use of all proven techniques for the collection of child, spousal, and medical support and monetary judgments. While income withholding is the preferred technique, other techniques such as liens on property and contempt proceedings should be used when appropriate. The purpose of the Income Withholding for Child Support Act is to provide a simplified and relatively automatic procedure for implementing income withholding in order to guarantee that child, spousal, and medical support obligations and monetary judgments are met when income is available for that purpose, to encourage voluntary withholding by obligors, and to facilitate the implementation of income withholding based on foreign support orders.

Source: Laws 1985, Second Spec. Sess., LB 7, § 22; Laws 1991, LB 457, § 18; Laws 2010, LB712, § 28.

43-1703 Definitions, where found.

For purposes of the Income Withholding for Child Support Act, unless the context otherwise requires, the definitions found in sections 43-1704 to 43-1717 shall be used.

Source: Laws 1985, Second Spec. Sess., LB 7, § 23; Laws 1991, LB 457, § 19; Laws 2000, LB 972, § 20; Laws 2010, LB712, § 29.

43-1712.02 Monetary judgment, defined.

Monetary judgment shall mean a monetary judgment against an obligor that is unsatisfied and is owed to the federal or state governmental unit in a case in which services are being provided under Title IV-D of the federal Social Security Act, as amended, and the judgment is related to the support of a child. Monetary judgment includes, but is not limited to, the cost of genetic testing that the obligor has been ordered to pay by a court, plus any accumulated interest on the judgment under sections 45-103 to 45-103.04, whether the order was issued prior to, on, or after July 15, 2010.

Source: Laws 2010, LB712, § 30.

43-1717 Support order, defined.

Support order shall mean any order, decree, or judgment for child, spousal, or medical support or for payment of any arrearage for such support issued by a court or agency of competent jurisdiction, whether issued prior to, on, or after November 16, 1985, whether for temporary or permanent support, whether interlocutory or final, whether or not modifiable, and whether or not incidental to a proceeding for dissolution of marriage, judicial or legal separation, separate maintenance, paternity, guardianship, or civil protection or any other action. A support order may include payment for any monetary judgment.

Source: Laws 1985, Second Spec. Sess., LB 7, § 37; Laws 1991, LB 457, § 25; Laws 2010, LB712, § 31.

43-1718.02 Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.

(1) In any case in which services are not provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after July 1, 1994, the obligor's income shall be subject to income withholding regardless of whether or not payments pursuant to such order are in arrears, and the court shall require such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties providing an alternative arrangement is incorporated into the support order.

(2) If the court pursuant to subsection (1) of this section orders income withholding regardless of whether or not payments are in arrears, the obligor shall prepare a notice to withhold income. The notice to withhold income shall be substantially similar to a prototype prepared by the department and made available by the department to the State Court Administrator and the clerks of the district courts. The notice to withhold shall direct:

(a) That the employer or other payor shall withhold from the obligor's disposable income the amount stated in the notice to withhold for the purpose of satisfying the obligor's ongoing obligation for support payments as they become due, if there are arrearages, to reduce such arrearages in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order, and after the obligor's support obligation is current, to satisfy any monetary judgment against the obligor;

(b) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not required to be withheld as stated on the notice or pursuant to any court order;

(c) That the employer or other payor shall not withhold more than the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld, including interest, to satisfy an arrearage of child, spousal, or medical support or any monetary judgment when added to the amount withheld to pay current support and the fee provided for in subdivision (2)(d) of this section shall not exceed such maximum amount;

(d) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(e) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative fee by subdivision (2)(d) of this section, to the State Disbursement Unit and shall notify the unit of the date such income was withheld;

(f) That the notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor;

(g) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit if the portion of the single payment which is attributable to each individual obligor is separately identified;

(h) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving a notice to withhold income shall be subject to the penalties prescribed in subsections (4) and (5) of this section; and

(i) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in subdivision (c) of this subsection is insufficient to satisfy the total support amount stated in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support stated by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support stated in such notice bears to the total amount of current support stated in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage stated in such notice bears to the total amount of arrearage stated in all notices received for the obligor. Any income available to be withheld after the obligor's support obligation is current shall be applied to any monetary judgment. If a monetary judgment is stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the

monetary judgments stated in such notice bears to the total amount of monetary judgments stated in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld.

(3) The obligor shall deliver the notice to withhold income to his or her current employer or other payor and provide a copy of such notice to the clerk of the district court.

(4) Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in subsection (2) of this section, shall be required to pay to the unit the amount specified in the notice.

(5)(a) An employer or other payor shall not use an order or notice to withhold income or order or the possibility of income withholding as a basis for (i) discrimination in hiring, (ii) demotion of an employee or payee, (iii) disciplinary action against an employee or payee, or (iv) termination of an employee or payee.

(b) Upon application by the obligor and after a hearing on the matter, the court may impose a civil fine of up to five hundred dollars for each violation of this subsection.

(c) An employer or other payor who violates this subsection shall be required to make full restitution to the aggrieved employee or payee, including reinstatement and backpay.

(6) When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates, all past-due support has been paid, and any monetary judgment has been paid, in which case the obligor shall notify the employer or other payor to cease withholding income.

(7) A notice to withhold income may be modified or revoked by a court of competent jurisdiction as a result of modification of the support order. A notice to withhold income may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue.

(8) The obligee or obligor may file an action in district court to enforce this section.

(9) If after an order is issued in any case under this section the case becomes one in which services are provided under Title IV-D of the federal Social Security Act, as amended, the county attorney or authorized attorney or the Department of Health and Human Services shall implement income withholding as otherwise provided in the Income Withholding for Child Support Act.

Source: Laws 1994, LB 1224, § 67; Laws 1996, LB 1044, § 204; Laws 1996, LB 1155, § 11; Laws 1997, LB 307, § 80; Laws 1997, LB 752, § 104; Laws 2000, LB 972, § 23; Laws 2007, LB296, § 130; Laws 2010, LB712, § 32.

43-1720 Notice to employer, payor, or obligor; contents.

If the department has previously sent a notice of assignment and opportunity for hearing on the same support order under section 48-647, the county attorney, authorized attorney, or the department shall state the amount to be withheld from an obligor's disposable income pursuant to section 43-1722 and shall notify the obligor's employer or other payor pursuant to section 43-1723. If the department has not previously sent such notice, and except in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01 or section 43-1718.02, upon receiving certification pursuant to section 42-358 or notice of delinquent payments of medical support, the county attorney, the authorized attorney, or the department shall send a notice by certified mail to the last-known address of the obligor stating:

(1) That an assignment of his or her income by means of income withholding will go into effect within fifteen days after the date the notice is sent;

(2) That the income withholding will continue to apply to any subsequent employer or other payor of the obligor;

(3) The amount of support and any monetary judgment the obligor owes;

(4) The amount of income that will be withheld; and

(5) That within the fifteen-day period, the obligor may request a hearing in the manner specified in the notice to contest a mistake of fact. For purposes of this subdivision, mistake of fact shall mean (a) an error in the amount of current or overdue support or the amount of any monetary judgment, (b) an error in the identity of the obligor, or (c) an error in the amount to be withheld as provided in section 43-1722.

Source: Laws 1985, Second Spec. Sess., LB 7, § 40; Laws 1986, LB 600, § 3; Laws 1991, LB 457, § 29; Laws 1993, LB 523, § 15; Laws 1994, LB 1224, § 68; Laws 1996, LB 1044, § 205; Laws 1996, LB 1155, § 12; Laws 1997, LB 307, § 81; Laws 2007, LB296, § 131; Laws 2010, LB712, § 33.

43-1722 Assignment; statement of amount.

(1) If no hearing is requested by the obligor, (2) if after a hearing the department determines that the assignment should go into effect, (3) in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01, or (4) in cases in which the court has ordered income withholding pursuant to section 43-1718.02, which case subsequently becomes one in which services are being provided under Title IV-D of the federal Social Security Act, as amended, the county attorney, the authorized attorney, or the department shall state the amount to be withheld from the obligor's disposable income. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld, including interest, to satisfy an arrearage of child, spousal, or medical support or any monetary judgment when added to the amount withheld to pay current support and the fee provided for in section 43-1723 shall not exceed such maximum amount.

Source: Laws 1985, Second Spec. Sess., LB 7, § 42; Laws 1991, LB 457, § 31; Laws 1993, LB 523, § 16; Laws 1994, LB 1224, § 69; Laws 1996, LB 1155, § 13; Laws 2010, LB712, § 34.

43-1723 Notice to employer or other payor; contents; compliance; effect.

Except as otherwise provided in this section, the county attorney, the authorized attorney, or the department shall notify the obligor's employer or other payor, by first-class mail or by electronic means, within the time determined by the department which shall comply with the requirements of Title IV-D of the federal Social Security Act, as amended. The notice shall specify the basis for the assignment of income and shall direct:

(1) That the employer or other payor shall withhold from the obligor's disposable income the amount stated by the county attorney, the authorized attorney, or the department for the purpose of reducing and satisfying the obligor's (a) previous arrearage in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order previously entered, (b) ongoing obligation for support payments as they become due, and (c) then any monetary judgment;

(2) That the employer or other payor shall implement income withholding no later than the first pay period that begins following the date on the notice;

(3) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not stated to be withheld pursuant to section 43-1722 or any court order;

(4) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(5) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative expense by subdivision (4) of this section, to the State Disbursement Unit as designated in the notice and shall notify the unit of the date such income was withheld;

(6) That the employer or other payor shall notify the county attorney, the authorized attorney, or the department in writing of the termination of the employment or income of the obligor, the last-known address of the obligor, and the name and address of the obligor's new employer or other payor, if known, and shall provide such written notification within thirty days after the termination of employment or income;

(7) That income withholding is binding on the employer or other payor until further notice by the county attorney, the authorized attorney, or the department;

(8) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit as designated in an income withholding notice if the portion of the single payment which is attributable to each individual obligor is separately identified;

(9) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving an income withholding notice shall be subject to the penalties prescribed in sections 43-1724 and 43-1725; and

(10) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in section 43-1722 is insufficient to

satisfy the total support amount stated in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support stated by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support stated in such notice bears to the total amount of current support stated in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage stated in such notice bears to the total amount of arrearage stated in all notices received for the obligor. Any income available to be withheld after the obligor's support obligation is current shall be applied to any monetary judgment. If a monetary judgment is stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the monetary judgments stated in such notice bears to the total amount of monetary judgments stated in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld. The county attorney, the authorized attorney, or the department need not notify the Commissioner of Labor as a payor if the commissioner is withholding for child support from the obligor under section 48-647 for the same support order.

Source: Laws 1985, Second Spec. Sess., LB 7, § 43; Laws 1986, LB 600, § 5; Laws 1991, LB 457, § 32; Laws 1993, LB 523, § 17; Laws 1996, LB 1155, § 14; Laws 1997, LB 752, § 105; Laws 2000, LB 972, § 24; Laws 2003, LB 245, § 3; Laws 2010, LB712, § 35.

43-1724 Employer or other payor; failure to withhold and remit income; effect.

Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in section 43-1723, shall be required to pay the stated amount to the State Disbursement Unit. The county attorney or authorized attorney may file an action in district court to enforce this section. The court may sanction an employer or other payor twenty-five dollars per day, up to five hundred dollars per incident, for failure to comply with proper notice.

Source: Laws 1985, Second Spec. Sess., LB 7, § 44; Laws 1991, LB 457, § 33; Laws 1993, LB 523, § 18; Laws 2005, LB 116, § 20; Laws 2010, LB712, § 36.

43-1726 Notice to withhold income; termination; exception; procedure.

When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the county attorney, the authorized attorney, or the department thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor, except that a notice to

withhold income shall not terminate with respect to unemployment compensation benefits being withheld by the Commissioner of Labor pursuant to section 48-647. The employer or other payor shall return a copy of the notice to withhold income to the county attorney, the authorized attorney, or the department, indicate that the employment or obligation to pay income has ceased, and cooperate in providing any known forwarding information. The county attorney, the authorized attorney, or the department shall notify the clerk of the appropriate district court that such employment or obligation to pay income has ceased. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates, all past-due support has been paid, and any monetary judgments have been paid, in which case the county attorney, the authorized attorney, or the department shall notify the employer or other payor to cease withholding income.

Source: Laws 1985, Second Spec. Sess., LB 7, § 46; Laws 1986, LB 600, § 6; Laws 1991, LB 457, § 35; Laws 1993, LB 523, § 20; Laws 1996, LB 1155, § 15; Laws 2010, LB712, § 37.

43-1727 Income withholding notice; modification or revocation; notice.

(1) An income withholding notice may be modified or revoked by a court of competent jurisdiction or by the county attorney, the authorized attorney, or the department as a result of a review conducted pursuant to sections 43-512.12 to 43-512.18. An income withholding notice may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue. An income withholding notice may also be modified or revoked by the county attorney, the authorized attorney, or the department as provided in subsection (2) of this section or for other good cause. Payment by the obligor of overdue support or any monetary judgment, other than through income withholding, after receipt of notice of income withholding shall not by itself constitute good cause for modifying or revoking an income withholding notice.

(2) When income withholding has been implemented and, as a result, a support delinquency has been eliminated, the Title IV-D Division or its designee shall notify the county attorney, the authorized attorney, or the department. Upon receipt of such notification, the county attorney, the authorized attorney, or the department shall modify the income withholding notice to require income withholding for current support and any monetary judgments and shall notify the employer or other payor of the change in the same manner as provided in section 43-1723.

Source: Laws 1985, Second Spec. Sess., LB 7, § 47; Laws 1991, LB 457, § 36; Laws 1991, LB 715, § 24; Laws 1996, LB 1155, § 16; Laws 2000, LB 972, § 25; Laws 2010, LB712, § 38.

ARTICLE 19
CHILD ABUSE PREVENTION

Section
43-1905. Department; duties.

43-1905 Department; duties.

The department shall:

(1) Have the power to deny any grant award, or portion of such award, made by the board;

(2) Review and monitor expenditures of money from the fund on a periodic basis; and

(3) Submit to the Governor and the Legislature an annual report of all receipts and disbursements of funds, including the recipients, the nature of the program funded, the dollar amount awarded, and the percentage of the total annually available funds the grant represents. The report submitted to the Legislature shall be submitted electronically. The report may be made available to the public upon request.

Source: Laws 1986, LB 333, § 5; Laws 2007, LB296, § 135; Laws 2012, LB782, § 46.

ARTICLE 20

MISSING CHILDREN IDENTIFICATION ACT

Section

43-2007. Schools; exempt school; duties.

43-2007 Schools; exempt school; duties.

(1) Upon notification by the patrol of a missing person, any school in which the missing person is currently or was previously enrolled shall flag the school records of such person in such school's possession. The school shall report immediately any request concerning a flagged record or any knowledge of the whereabouts of the missing person.

(2) Upon enrollment of a student for the first time in a public school district or private school system, the school of enrollment shall notify in writing the person enrolling the student that within thirty days he or she must provide either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(3) Upon enrollment of a student who is receiving his or her education in an exempt school subject to sections 79-1601 to 79-1607, the parent or guardian of such student shall provide to the Commissioner of Education either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(4) Upon failure of the person, parent, or guardian to comply with subsection (2) or (3) of this section, the school or Commissioner of Education shall notify such person, parent, or guardian in writing that unless he or she complies within ten days the matter shall be referred to the local law enforcement agency for investigation. If compliance is not obtained within such ten-day period, the school or commissioner shall immediately report such matter. Any affidavit received pursuant to subsection (2) or (3) of this section that appears inaccurate or suspicious in form or content shall be reported immediately to the local law enforcement agency by the school or commissioner.

(5) Any school requested to forward a copy of a transferred student's record shall not forward a copy of such record to the requesting school if the record has been flagged pursuant to subsection (1) of this section. If such record has been flagged, the school to whom such request is made shall notify the local

law enforcement agency of the request and that such student is a reported missing person.

Source: Laws 1987, LB 599, § 7; Laws 1991, LB 511, § 3; Laws 1992, LB 245, § 9; Laws 1996, LB 900, § 1047; Laws 2009, LB549, § 2.

ARTICLE 21 AGE OF MAJORITY

Section

43-2101. Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

43-2101 Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends. Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person eighteen years of age or older and who is not a ward of the state may enter into a binding contract or lease of whatever kind or nature and shall be legally responsible therefor.

Source: R.S.1866, c. 23, § 1, p. 178; R.S.1913, § 1627; Laws 1921, c. 247, § 1, p. 853; C.S.1922, § 1576; C.S.1929, § 38-101; R.S.1943, § 38-101; Laws 1965, c. 207, § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072; Laws 1972, LB 1086, § 1; R.S.1943, (1984), § 38-101; Laws 1988, LB 790, § 6; Laws 2010, LB226, § 2.

Cross References

Juvenile committed under Nebraska Juvenile Code, marriage under age of nineteen years does not make juvenile age of majority, see section 43-289.

ARTICLE 24 JUVENILE SERVICES

Section

43-2402. Terms, defined.

43-2404. Grants; use.

43-2404.01. Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.

43-2404.02. Community-based Juvenile Services Aid Program; created; use; reports.

43-2404.03. Legislative intent.

43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

43-2412. Coalition; powers and duties.

43-2402 Terms, defined.

For purposes of the Juvenile Services Act:

(1) Coalition means the Nebraska Coalition for Juvenile Justice established pursuant to section 43-2411;

(2) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

(3) Commission Grant Program means grants provided to eligible applicants under section 43-2406;

(4) Community-based Juvenile Services Aid Program means aid to counties and federally recognized or state-recognized Indian tribes provided under section 43-2404.02;

(5) Eligible applicant means a community-based agency or organization, political subdivision, school district, federally recognized or state-recognized Indian tribe, or state agency necessary to comply with the federal act;

(6) Federal act means the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 et seq., as the act existed on January 1, 2013;

(7) Juvenile means a person who is under eighteen years of age; and

(8) Office of Juvenile Services means the Office of Juvenile Services created in section 43-404.

Source: Laws 1990, LB 663, § 2; Laws 1992, LB 447, § 6; Laws 2000, LB 1167, § 41; Laws 2001, LB 640, § 3; Laws 2013, LB561, § 45.

43-2404 Grants; use.

The coalition shall make award recommendations to the commission, at least annually, in accordance with the Juvenile Services Act and the federal act for grants made under the Commission Grant Program. Such grants shall be used to assist in the implementation and operation of programs or services identified in the applicable comprehensive juvenile services plan, to include: Programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; reentry services; truancy prevention and intervention programs; and other services documented by data that will positively impact juveniles and families in the juvenile justice system.

Source: Laws 1990, LB 663, § 4; Laws 1992, LB 447, § 8; Laws 1997, LB 424, § 2; Laws 2000, LB 1167, § 43; Laws 2001, LB 640, § 5; Laws 2013, LB561, § 46.

43-2404.01 Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.

(1) To be eligible for participation in either the Commission Grant Program or the Community-based Juvenile Services Aid Program, a comprehensive juvenile services plan shall be developed, adopted, and submitted to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, and the University of Nebraska at Omaha, Juvenile Justice Institute. Such plan may be developed by eligible applicants for the Commission Grant Program and by individual counties, by multiple counties, by federally recognized or state-recognized Indian tribes, or by any combination of the three for the Community-based Juvenile Services Aid Program. Comprehensive juvenile services plans shall:

(a) Be developed by a comprehensive community team representing juvenile justice system stakeholders;

(b) Be based on data relevant to juvenile and family issues;

(c) Identify policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(d) Identify clear implementation strategies; and

(e) Identify how the impact of the program or service will be measured.

(2) Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 to 43-534 and shall include policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes.

(3) The commission, in consultation with the University of Nebraska at Omaha, Juvenile Justice Institute, shall contract for the development and administration of a statewide system to monitor and evaluate the effectiveness of plans and programs receiving funds from (a) the Commission Grant Program and (b) the Community-based Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile offenders.

(4) There is established within the commission the position of Director of the Community-based Juvenile Services Aid Program, appointed by the executive director of the commission. The director shall have extensive experience in developing and providing community-based services.

(5) The director shall be supervised by the executive director of the commission. The director shall:

(a) Provide technical assistance and guidance for the development of comprehensive juvenile services plans;

(b) Coordinate the review of the Community-based Juvenile Services Aid Program application as provided in section 43-2404.02 and make recommendations for the distribution of funds provided under the Community-based Juvenile Services Aid Program, giving priority to those grant applications funding programs and services that will divert juveniles from the juvenile justice system, impact and effectively treat juveniles within the juvenile justice system, and reduce the juvenile detention population or assist juveniles in transitioning from out-of-home placements to in-home treatments. The director shall ensure that no funds appropriated or distributed under the Community-based Juvenile Services Aid Program are used for purposes prohibited under subsection (3) of section 43-2404.02;

(c) Develop data collection and evaluation protocols, oversee statewide data collection, and generate an annual report on the effectiveness of juvenile services that receive funds from the Community-based Juvenile Services Aid Program;

(d) Develop relationships and collaborate with juvenile justice system stakeholders, provide education and training as necessary, and serve on boards and committees when approved by the commission;

(e) Assist juvenile justice system stakeholders in developing policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(f) Develop and coordinate a statewide working group as a subcommittee of the coalition to assist in regular strategic planning related to supporting, funding, monitoring, and evaluating the effectiveness of plans and programs receiving funds from the Community-based Juvenile Services Aid Program; and

(g) Work with the coordinator for the coalition in facilitating the coalition's obligations under the Community-based Juvenile Services Aid Program.

Source: Laws 2001, LB 640, § 6; Laws 2005, LB 193, § 1; Laws 2013, LB561, § 47.

43-2404.02 Community-based Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the Community-based Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid in the establishment and provision of community-based services for juveniles who come in contact with the juvenile justice system.

(2) The annual General Fund appropriation to the Community-based Juvenile Services Aid Program shall be apportioned as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county and federally recognized or state-recognized Indian tribe who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from the county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three which is receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3)(a) In distributing funds provided under the Community-based Juvenile Services Aid Program, aid recipients shall prioritize programs and services that will divert juveniles from the juvenile justice system, reduce the population of juveniles in juvenile detention and secure confinement, and assist in transitioning juveniles from out-of-home placements.

(b) Funds received under the Community-based Juvenile Services Aid Program shall be used exclusively to assist the aid recipient in the implementation and operation of programs or the provision of services identified in the aid recipient's comprehensive juvenile services plan, including programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; truancy prevention and intervention programs; pilot projects approved by the commission; payment of transportation costs to and from placements, evaluations, or services; personnel when the personnel are aligned with evidence-based treatment principles, programs, or practices; contracting with other state agencies or private organizations that provide evidence-based treatment or programs; preexisting programs that are aligned with evidence-based practices

or best practices; and other services that will positively impact juveniles and families in the juvenile justice system.

(c) Funds received under the Community-based Juvenile Services Aid Program shall not be used for the following: Construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities; capital construction or the lease or acquisition of facilities; programs, services, treatments, evaluations, or other preadjudication services that are not based on or grounded in evidence-based practices, principles, and research, except that the commission may approve pilot projects that authorize the use of such aid; or office equipment, office supplies, or office space.

(d) Any aid not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the Community-based Juvenile Services Aid Program for a county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three demonstrating additional need in the funding areas identified in this subsection.

(e) If a county, multiple counties, or a federally recognized or state-recognized Indian tribe or tribes is denied aid under this section or receives no aid under this section, the entity may request an appeal pursuant to the appeal process in rules and regulations adopted and promulgated by the commission. The commission shall establish appeal and hearing procedures by December 15, 2014. The commission shall make appeal and hearing procedures available on its web site.

(4) Any recipient of aid under the Community-based Juvenile Services Aid Program shall file an annual report as required by rules and regulations adopted and promulgated by the commission. The report shall include, but not be limited to, the type of juvenile service, how the service met the goals of the comprehensive juvenile services plan, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures for detention, residential treatment, and nonresidential treatment.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for aid appropriated under the Community-based Juvenile Services Aid Program. The report shall include, but not be limited to, an aggregate report of the use of the Community-based Juvenile Services Aid Program funds, including the types of juvenile services and programs that were funded, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures of all counties and federally recognized or state-recognized Indian tribes for detention, residential treatment, and secure confinement. The report submitted to the Legislature shall be submitted electronically.

(6) The commission shall adopt and promulgate rules and regulations for the Community-based Juvenile Services Aid Program in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, the Nebraska Association of County Officials, and the University of Nebraska at

Omaha, Juvenile Justice Institute. The rules and regulations shall include, but not be limited to:

- (a) The required elements of a comprehensive juvenile services plan and planning process;
- (b) The Community-based Juvenile Services Aid Program formula, review process, match requirements, and fund distribution. The distribution process shall ensure a conflict of interest policy;
- (c) A distribution process for funds retained under subsection (3) of this section;
- (d) A plan for evaluating the effectiveness of plans and programs receiving funding;
- (e) A reporting process for aid recipients; and
- (f) A reporting process for the commission to the Governor and Legislature. The report shall be made electronically to the Governor and the Legislature.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33; Laws 2012, LB782, § 47; Laws 2013, LB561, § 48; Laws 2014, LB464, § 30.
Operative date July 18, 2014.

43-2404.03 Legislative intent.

It is the intent of the Legislature to appropriate five million dollars to the Community-based Juvenile Services Aid Program.

Source: Laws 2014, LB464, § 31.
Operative date July 18, 2014.

43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

(1) The Nebraska Coalition for Juvenile Justice is created. As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition. Coalition members who are members of the judicial branch of government shall be nonvoting members of the coalition. The coalition members shall be appointed by the Governor and shall include:

- (a) The Administrator of the Office of Juvenile Services;
- (b) The chief executive officer of the Department of Health and Human Services or his or her designee;
- (c) The Commissioner of Education or his or her designee;
- (d) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;
- (e) The Executive Director of the Nebraska Association of County Officials or his or her designee;
- (f) The probation administrator of the Office of Probation Administration or his or her designee;
- (g) One county commissioner or supervisor;
- (h) One person with data analysis experience;
- (i) One police chief;
- (j) One sheriff;

- (k) The executive director of the Foster Care Review Office;
- (l) One separate juvenile court judge;
- (m) One county court judge;
- (n) One representative of mental health professionals who works directly with juveniles;
- (o) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;
- (p) One volunteer who works with juvenile offenders or potential juvenile offenders;
- (q) One person who works with an alternative to a detention program for juveniles;
- (r) The director or his or her designee from a youth rehabilitation and treatment center;
- (s) The director or his or her designee from a secure juvenile detention facility;
- (t) The director or his or her designee from a staff secure youth confinement facility;
- (u) At least five members who are under twenty-four years of age when appointed;
- (v) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;
- (w) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;
- (x) One member of a regional behavioral health authority established under section 71-808;
- (y) One county attorney; and
- (z) One public defender.

(2) The terms of members appointed pursuant to subdivisions (1)(g) through (1)(z) of this section shall be three years, except that the terms of the initial appointments of members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four at the time of appointment. Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(3) Members of the coalition shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(4) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

Source: Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138; Laws 2013, LB561, § 49.

43-2412 Coalition; powers and duties.

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

(a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;

(b) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system;

(c) Recommend guidelines and supervision procedures to be used to develop or expand local diversion programs for juveniles from the juvenile justice system;

(d) Prepare an annual report to the Governor, the Legislature, the Office of Probation Administration, and the Office of Juvenile Services including recommendations on administrative and legislative actions which would improve the juvenile justice system. The report submitted to the Legislature shall be submitted electronically;

(e) Ensure widespread citizen involvement in all phases of its work; and

(f) Meet at least four times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

(a) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;

(b) Apply for and receive funds from federal and private sources for carrying out its powers and duties; and

(c) Provide technical assistance to eligible applicants.

(3) In formulating, adopting, and promulgating the recommendations and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

Source: Laws 1990, LB 663, § 12; Laws 1992, LB 447, § 12; Laws 1997, LB 424, § 9; Laws 2000, LB 1167, § 49; Laws 2001, LB 640, § 12; Laws 2012, LB782, § 48; Laws 2013, LB561, § 50.

ARTICLE 25

INFANTS WITH DISABILITIES

Section

43-2507.02. State Department of Education; duties.

43-2511. Statewide billing system; establishment; participation required; implementation and administrative costs; how treated.

43-2513. Special grant funds; designation.

43-2515. Federal medicaid funds; certification; appropriations; legislative intent.

43-2507.02 State Department of Education; duties.

The State Department of Education shall maintain its responsibility under the Special Education Act regarding special education and related services and may adopt and promulgate rules and regulations pursuant to section 43-2516 that meet the requirements of subchapter III of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1431 to 1445, as such act and sections existed on January 1, 2013, and the regulations adopted thereunder. The

department shall provide grants for the costs of such programs to the school district of residence as provided in section 79-1132.

Source: Laws 1993, LB 520, § 12; Laws 1996, LB 900, § 1049; Laws 2013, LB410, § 1.

Cross References

Special Education Act, see section 79-1110.

43-2511 Statewide billing system; establishment; participation required; implementation and administrative costs; how treated.

There is hereby established a statewide billing system for accessing federal medicaid funds for special education and related services provided by school districts. The system shall apply to all students verified with disabilities from date of diagnosis to twenty-one years of age as allowed under the federal Medicare Catastrophic Coverage Act of 1988. The system shall be developed, implemented, and administered jointly by the Department of Health and Human Services and the State Department of Education. On or before October 1, 2015, the Department of Health and Human Services and the State Department of Education shall jointly revise the statewide billing system to streamline and simplify the claims process, to update reimbursement rates, and to incorporate services included in the state plan amendment submitted pursuant to subsection (4) of section 68-911. After the reimbursement rates have been updated pursuant to this section, such rates shall be reviewed at least once every five years. School districts, educational service units, or approved cooperatives providing special education and related services shall be required to participate in the statewide billing system. Eleven and fifty-four hundredths percent of federal medicaid funds received by school districts pursuant to such billing system shall be considered reimbursement for the costs to school districts associated with the implementation and administration of such a system, and such costs shall be included in the medicaid reimbursement rates to be established for each service. From the amount provided pursuant to section 43-2515 to aid in carrying out the Early Intervention Act, the Department of Health and Human Services shall retain, for the purposes of implementing and administering the statewide billing system and early intervention services coordination services, an amount equal to the lesser of the actual cost of implementing and administering the statewide billing system and early intervention services coordination services or (1) for fiscal year 2014-15, two hundred forty-two thousand dollars, (2) for fiscal year 2015-16, three hundred thousand dollars, or (3) for fiscal year 2016-17 and each fiscal year thereafter, the amount retained for such purposes for the prior year increased by five percent.

Source: Laws 1991, LB 701, § 10; Laws 1993, LB 520, § 16; Laws 1996, LB 1044, § 216; Laws 2007, LB296, § 145; Laws 2014, LB276, § 1.

Effective date July 18, 2014.

43-2513 Special grant funds; designation.

For purposes of the general fund budget of expenditures as defined in section 79-1003, funds received to carry out the services coordination functions or designated as reimbursement for costs associated with the implementation and

administration of the billing system pursuant to section 43-2511 shall be considered special grant funds.

Source: Laws 1991, LB 701, § 12; Laws 1993, LB 520, § 19; Laws 1994, LB 1290, § 1; Laws 1995, LB 840, § 1; Laws 1996, LB 900, § 1051; Laws 2014, LB276, § 2.
Effective date July 18, 2014.

43-2515 Federal medicaid funds; certification; appropriations; legislative intent.

For years 1993 through 2015, on or before October 1, the Department of Health and Human Services and the State Department of Education shall jointly certify to the budget administrator of the budget division of the Department of Administrative Services the amount of federal medicaid funds paid to school districts pursuant to the Early Intervention Act for special education services for children five years of age and older for the immediately preceding fiscal year. The General Fund appropriation to the State Department of Education for state special education aid for the then-current fiscal year shall be decreased by an amount equal to the amount that would have been reimbursed with state general funds to the school districts through the special education reimbursement process for special education services for children five years of age and older that was paid to school districts or approved cooperatives with federal medicaid funds.

For fiscal years through fiscal year 2015-16, it is the intent of the Legislature that an amount equal to the amount that would have been reimbursed with state general funds to the school districts, certified to the budget administrator, be appropriated from the General Fund to aid in carrying out the provisions of the Early Intervention Act and other related early intervention services.

For 2015 and each year thereafter, on or before December 1, the Department of Health and Human Services and the State Department of Education shall jointly certify to the budget administrator of the budget division of the Department of Administrative Services the aggregate amount to be included in the local system formula resources pursuant to subdivision (16) of section 79-1018.01 for all local systems for aid to be calculated pursuant to the Tax Equity and Educational Opportunities Support Act for the next school fiscal year.

For fiscal year 2016-17 and each fiscal year thereafter, it is the intent of the Legislature that, in addition to other state and federal funds used to carry out the Early Intervention Act, funds equal to the lesser of the amount certified to the budget administrator or the amount appropriated or transferred for such purposes pursuant to this section for the immediately preceding fiscal year increased by five percent be appropriated from the General Fund to aid in carrying out the provisions of the Early Intervention Act and other related early intervention services.

Source: Laws 1993, LB 520, § 20; Laws 1996, LB 1044, § 218; Laws 1998, Spec. Sess., LB 1, § 4; Laws 2007, LB296, § 147; Laws 2014, LB276, § 3.
Effective date July 18, 2014.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**ARTICLE 26
CHILD CARE**

Section

43-2618. Family child care homes; inspections.

43-2618 Family child care homes; inspections.

All family child care homes which are registered pursuant to section 43-2609 shall be inspected within sixty days of registration. All family child care homes registered under section 43-2609 shall be inspected at least every two years after the initial inspection. It is the intent of the Legislature that registered family child care homes be inspected annually if sufficient funds are made available under the federal Child Care and Development Block Grant Act of 1990 for such purposes.

Source: Laws 1991, LB 836, § 18; Laws 1995, LB 401, § 18; Laws 1997, LB 310, § 3; Laws 2014, LB1050, § 1.
Effective date July 18, 2014.

**ARTICLE 29
PARENTING ACT**

Section

- 43-2920. Act, how cited.
- 43-2922. Terms, defined.
- 43-2923. Best interests of the child requirements.
- 43-2929. Parenting plan; developed; approved by court; contents.
- 43-2929.01. Children of military parents; proceeding involving military parent; court; considerations; limitation on certain orders; attorney's fees.
- 43-2930. Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.
- 43-2932. Parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.
- 43-2935. Hearing; parenting plan; modification; court powers.
- 43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

43-2920 Act, how cited.

Sections 43-2920 to 43-2943 shall be known and may be cited as the Parenting Act.

Source: Laws 2007, LB554, § 1; Laws 2011, LB673, § 2.

43-2922 Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in sections 43-2923 and 43-2929.01;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Military parent means a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Reserves of the United States or the National Guard;

(17) Office of Dispute Resolution means the office established under section 25-2904;

(18) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(19) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(20) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(21) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(22) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(23) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(24) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(25) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(26) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3.

Cross References

Conciliation Court Law, see section 42-802.

43-2923 Best interests of the child requirements.

The best interests of the child require:

(1) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children;

(2) When a preponderance of the evidence indicates domestic intimate partner abuse, a parenting and visitation arrangement that provides for the safety of a victim parent;

(3) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child;

(4) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child;

(5) That certain principles provide a basis upon which education of parents is delivered and upon which negotiation and mediation of parenting plans are conducted. Such principles shall include: To minimize the potentially negative impact of parental conflict on children; to provide parents the tools they need to reach parenting decisions that are in the best interests of a child; to provide alternative dispute resolution or specialized alternative dispute resolution options that are less adversarial for the child and the family; to ensure that the child's voice is heard and considered in parenting decisions; to maximize the safety of family members through the justice process; and, in cases of domestic intimate partner abuse or child abuse or neglect, to incorporate the principles of victim safety and sensitivity, offender accountability, and community safety in parenting plan decisions; and

(6) In determining custody and parenting arrangements, the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of the foregoing factors and:

(a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning;

(c) The general health, welfare, and social behavior of the minor child;

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903; and

(e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. For purposes of this subdivision, the definitions in section 43-2922 shall be used.

Source: Laws 2007, LB554, § 4; Laws 2008, LB1014, § 56; Laws 2010, LB901, § 2.

43-2929 Parenting plan; developed; approved by court; contents.

(1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364, 43-2923, and 43-2929.01 and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child;

(viii) Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties; and

(ix) Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that the parties notify each other of a change of address, except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns.

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Source: Laws 2007, LB554, § 10; Laws 2008, LB1014, § 60; Laws 2011, LB673, § 5.

43-2929.01 Children of military parents; proceeding involving military parent; court; considerations; limitation on certain orders; attorney's fees.

(1) The Legislature finds that for children of military parents it is in the best interests of the child to maintain the parent-child bond during the military parent's mobilization or deployment.

(2) In a custody or parenting time, visitation, or other access proceeding or modification involving a military parent, the court shall consider and provide, if appropriate:

(a) Orders for communication between the military parent and his or her child during any mobilization or deployment of greater than thirty days. Such communication may be by electronic or other available means, including webcam, Internet, or telephone; and

(b) Parenting time, visitation, or other access orders that ensure liberal access between the military parent and the child during any military leave of the military parent during a mobilization or deployment of greater than thirty days.

(3) A military parent's military membership, mobilization, deployment, absence, relocation, or failure to comply with custody, parenting time, visitation, or other access orders because of military duty shall not, by itself, be sufficient

to justify an order or modification of an order involving custody, parenting time, visitation, or other access.

(4) If a custody, child support, or parenting time, visitation, or other access proceeding, or modification thereof, involves a military parent and is filed after the military parent's unit has received notice of potential deployment or during the time the military parent is mobilized or deployed:

(a) The court shall not issue a custody order or modify any previous custody order that changes custody as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may issue a temporary custody order or temporary modification if there is clear and convincing evidence that the custody change is in the best interests of the child;

(b) The court shall not issue a child support order or modify any previous child support order that changes child support as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may issue a temporary child support order or temporary modification if there is clear and convincing evidence that the order or modification is required to meet the child support guidelines established pursuant to section 42-364.16; and

(c) The court shall not issue a parenting time, visitation, or other access order or modify any previous order that changes parenting time, visitation, or other access as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may enter a temporary parenting time, visitation, or other access order or modify any such existing order to permit liberal parenting time, visitation, or other access during any military leave of the military parent.

(5) If a temporary order is issued under subsection (4) of this section, upon the military parent returning from mobilization or deployment, either parent may file a motion requesting a rehearing or reinstatement of a prior order. The court shall rehear the matter if the temporary order was the initial order in the proceeding and shall make a new determination regarding the proceeding. The court shall reinstate the original order if the temporary order was a modification unless the court finds that the best interests of the child or the child support guidelines established pursuant to section 42-364.16 require a new determination.

(6) Upon finding an (a) unreasonable failure of a nonmilitary parent to accommodate the military leave schedule of the military parent, (b) unreasonable delay by the nonmilitary parent of custody, child support, parenting time, visitation, or other access proceedings, (c) unreasonable failure of the military parent to notify the nonmilitary parent or court of release from mobilization, or (d) unreasonable failure of the military parent to provide requested documentation, the court may order the offending party to pay any attorney's fees of the other party incurred due to such unreasonable action.

(7) This section does not apply to permanent change of station moves by a military parent.

Source: Laws 2011, LB673, § 4.

43-2930 Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.

(1) Each party to a contested proceeding for a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall offer a child information affidavit as an exhibit at the hearing before the court. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and may include the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care schedules; and

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child.

The child information affidavit may also state any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restraining orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a contested hearing by live testimony or affidavit, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child;

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and a parent who has physical custody of the child necessary for the best interests of the child; and

(e) If appropriate, a requirement that a parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor as a condition of parenting time.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form that may be used by the parties to create a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Source: Laws 2007, LB554, § 11; Laws 2008, LB1014, § 61; Laws 2013, LB561, § 51.

43-2932 Parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.

(1) When the court is required to develop a parenting plan:

(a) If a preponderance of the evidence demonstrates, the court shall determine whether a parent who would otherwise be allocated custody, parenting time, visitation, or other access to the child under a parenting plan:

(i) Has committed child abuse or neglect;

(ii) Has committed child abandonment under section 28-705;

(iii) Has committed domestic intimate partner abuse; or

(iv) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; and

(b) If a parent is found to have engaged in any activity specified by subdivision (1)(a) of this section, limits shall be imposed that are reasonably calculated to protect the child or child's parent from harm. The limitations may include, but are not limited to:

(i) An adjustment of the custody of the child, including the allocation of sole legal custody or physical custody to one parent;

(ii) Supervision of the parenting time, visitation, or other access between a parent and the child;

(iii) Exchange of the child between parents through an intermediary or in a protected setting;

(iv) Restraints on the parent from communication with or proximity to the other parent or the child;

(v) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in a prescribed period immediately preceding such exercise;

(vi) Denial of overnight physical custodial parenting time;

(vii) Restrictions on the presence of specific persons while the parent is with the child;

(viii) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising physical custodial parenting time or to secure other performance required by the court; or

(ix) Any other constraints or conditions deemed necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(2) A court determination under this section shall not be considered a report for purposes of inclusion in the central registry of child protection cases pursuant to the Child Protection and Family Safety Act.

(3) If a parent is found to have engaged in any activity specified in subsection (1) of this section, the court shall not order legal or physical custody to be given to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under such subsection. The parent found to have engaged in the behavior specified in subsection (1) of this section has the burden of proving that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.

Source: Laws 2007, LB554, § 13; Laws 2008, LB1014, § 62; Laws 2014, LB853, § 26.

Effective date July 18, 2014.

Cross References

Child Protection and Family Safety Act, see section 28-710.

43-2935 Hearing; parenting plan; modification; court powers.

(1) After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests, the court shall modify and approve the parenting plan as modified, reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

(a) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

(b) Consequences for failure to follow parenting plan provisions.

(2) A hearing is not required under this section:

(a) In a divorce action, if both parties have waived in writing the requirement for a hearing under section 42-361;

(b) In an action for a legal separation, if both parties have waived in writing the requirement for a hearing under section 42-361.01; or

(c) In any other action creating or modifying a parenting plan including an action to establish paternity, if (i) all parties have waived in writing the requirement of the hearing, (ii) the court has sufficient basis to make a finding that it has subject matter jurisdiction over the action and personal jurisdiction over all parties, (iii) all documents required by the court and by law have been filed, and (iv) the parties have entered into a written agreement, signed by the parties under oath, resolving all issues presented by the pleadings.

Source: Laws 2007, LB554, § 16; Laws 2012, LB899, § 3; Laws 2013, LB107, § 1.

43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators under the Parenting Act.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2939.

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Source: Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3.

ARTICLE 30

ACCESS TO INFORMATION AND RECORDS

Section

43-3001. Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

43-3001 Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, school personnel, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the Foster Care Review Office, local foster care review boards, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from

any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 719, § 1; Laws 1994, LB 988, § 27; Laws 1996, LB 1044, § 233; Laws 2006, LB 1113, § 42; Laws 2008, LB1014, § 67; Laws 2009, LB35, § 29; Laws 2012, LB998, § 17.

ARTICLE 33

SUPPORT ENFORCEMENT

(a) LICENSE SUSPENSION ACT

Section

43-3326. Reports to Legislature.

(c) BANK MATCH SYSTEM

43-3330. Listing of obligors; financial institution; duties; confidentiality.

(e) STATE DISBURSEMENT UNIT

43-3342.04. Title IV-D Division; establish Customer Service Unit; duties; report.

43-3342.05. Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(a) LICENSE SUSPENSION ACT

43-3326 Reports to Legislature.

The department shall issue electronically a report to the Legislature on or before January 31 of each year which discloses the number of professional, occupational, or recreational licenses which were suspended and the number which were erroneously suspended and restored as a result of the License Suspension Act for the prior year. The Director of Motor Vehicles shall issue electronically a report to the Legislature on or before January 31 of each year which discloses the number of operators' licenses which were suspended and the number which were erroneously suspended and restored as a result of the License Suspension Act for the prior year.

Source: Laws 1997, LB 752, § 26; Laws 1999, LB 594, § 32; Laws 2007, LB296, § 161; Laws 2012, LB782, § 49.

(c) BANK MATCH SYSTEM

43-3330 Listing of obligors; financial institution; duties; confidentiality.

A financial institution shall receive from the department a listing of obligors to be used in matches within the financial institution's system. The listing from the department shall include the name and social security number or taxpayer identification number of each obligor to be used in matches within the financial institution's system. The financial institution shall receive the listing within thirty days after the end of each calendar quarter subsequent to January 1,

1998, and shall match the listing to its records of accounts held in one or more individuals' names which are open accounts and such accounts closed within the preceding calendar quarter within thirty days after receiving the listing and provide the department with a match listing of all matches made within five working days of the match. The match listing from the financial institution shall include the name, address, and social security number or taxpayer identification number of each obligor matched and the balance of each account. The financial institution shall also provide the names and addresses of all other owners of accounts in the match listing as reflected on a signature card or other similar document on file with the financial institution. The financial institution shall submit all match listings by disk, magnetic tape, or other medium approved by the department. Nothing in this section shall (1) require a financial institution to disclose the account number assigned to the account of any individual or (2) serve to encumber the ownership interest of any person in or impact any right of setoff against an account. The financial institution shall maintain the confidentiality of all records supplied and shall use the records only for the purposes of this section. To maintain the confidentiality of the listing and match listing, the department shall implement appropriate security provisions for the listing and match listing which are as stringent as those established under the Federal Tax Information Security Guidelines for federal, state, and local agencies.

Source: Laws 1997, LB 752, § 30; Laws 2010, LB712, § 39.

(e) STATE DISBURSEMENT UNIT

43-3342.04 Title IV-D Division; establish Customer Service Unit; duties; report.

(1) The Title IV-D Division shall establish a Customer Service Unit. In hiring the initial staff for the unit, a hiring preference shall be given to employees of the clerks of the district court. The duties of the Customer Service Unit include, but are not limited to:

(a) Providing account information as well as addressing inquiries made by customers of the State Disbursement Unit; and

(b) Administering two statewide toll-free telephone systems, one for use by employers and one for use by all other customers, to provide responses to inquiries regarding income withholding, the collection and disbursement of support order payments made to the State Disbursement Unit, and other child support enforcement issues, including establishing a call center with sufficient telephone lines, a voice response unit, and adequate personnel available during normal business hours to ensure that responses to inquiries are made by the division's personnel or the division's designee.

(2) The physical location of the Customer Service Unit shall be in Nebraska and shall result in the hiring of a number of new employees or contractor's staff equal to at least one-fourth of one percent of the labor force in the county or counties in which the Customer Service Unit is located. Customer service staff responsible for providing account information related to the State Disbursement Unit may be located at the same location as the State Disbursement Unit.

(3) The department shall issue a report to the Governor and to the Legislature on or before January 31 of each year which discloses information relating to

the operation of the State Disbursement Unit for the preceding calendar year including, but not limited to:

- (a) The number of transactions processed by the State Disbursement Unit;
 - (b) The dollar amount collected by the State Disbursement Unit;
 - (c) The dollar amount disbursed by the State Disbursement Unit;
 - (d) The percentage of identifiable collections disbursed within two business days;
 - (e) The percentage of identifiable collections that are matched to the correct case;
 - (f) The number and dollar amount of insufficient funds checks received by the State Disbursement Unit;
 - (g) The number and dollar amount of insufficient funds checks received by the State Disbursement Unit for which restitution is subsequently made to the State Disbursement Unit;
 - (h) The number of incoming telephone calls processed through the Customer Service Unit;
 - (i) The average length of incoming calls from employers;
 - (j) The average length of incoming calls from all other customers;
 - (k) The percentage of incoming calls resulting in abandonment by the customer;
 - (l) The percentage of incoming calls resulting in a customer receiving a busy signal;
 - (m) The average holding time for all incoming calls; and
 - (n) The percentage of calls handled by employees of the Customer Service Unit that are resolved within twenty-four hours.
- (4) The report issued to the Legislature pursuant to subsection (3) of this section shall be issued electronically.

Source: Laws 2000, LB 972, § 4; Laws 2007, LB296, § 169; Laws 2012, LB782, § 50.

43-3342.05 Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(1) The Child Support Advisory Commission is created. Commission members shall include:

- (a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;
- (b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;
- (c) One county attorney who works in child support;
- (d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;
- (e) One custodial parent who has a court order to receive child support;
- (f) One noncustodial parent who is under a support order to pay child support;

(g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;

(h) The chairperson of the Health and Human Services Committee of the Legislature;

(i) The State Treasurer or his or her designee;

(j) The State Court Administrator or his or her designee; and

(k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board. Any reports submitted to the Executive Board shall be submitted electronically.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

Source: Laws 2000, LB 972, § 5; Laws 2002, LB 1062, § 5; Laws 2006, LB 1113, § 43; Laws 2013, LB222, § 11.

ARTICLE 34

EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL

Section
43-3402. Council; advisory duties.

43-3402 Council; advisory duties.

With respect to the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104, the Early Childhood Interagency Coordinating Council shall serve in an advisory capacity to state agencies responsible for early childhood care and education, including care for school-age children, in order to:

- (1) Promote the policies set forth in the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104;
- (2) Facilitate collaboration with the federally administered Head Start program;
- (3) Make recommendations to the Department of Health and Human Services, the State Department of Education, and other state agencies responsible for the regulation or provision of early childhood care and education programs on the needs, priorities, and policies relating to such programs throughout the state;
- (4) Make recommendations to the lead agency or agencies which prepare and submit applications for federal funding;
- (5) Review new or proposed revisions to rules and regulations governing the registration or licensing of early childhood care and education programs;
- (6) Study and recommend additional resources for early childhood care and education programs; and
- (7) Report biennially to the Governor and Legislature on the status of early intervention and early childhood care and education in the state. The report submitted to the Legislature shall be submitted electronically. Such report shall include (a) the number of license applications received under section 71-1911, (b) the number of such licenses issued, (c) the number of such license applications denied, (d) the number of complaints investigated regarding such licensees, (e) the number of such licenses revoked, (f) the number and dollar amount of civil penalties levied pursuant to section 71-1920, and (g) information which may assist the Legislature in determining the extent of cooperation provided to the Department of Health and Human Services by other state and local agencies pursuant to section 71-1914.

Source: Laws 2000, LB 1135, § 7; Laws 2006, LB 994, § 64; Laws 2007, LB296, § 171; Laws 2012, LB782, § 51.

Cross References

Early Intervention Act, see section 43-2501.
Quality Child Care Act, see section 43-2601.

ARTICLE 35

NEBRASKA COUNTY JUVENILE SERVICES PLAN ACT

Section
43-3503. Legislative intent; county powers and duties.

43-3503 Legislative intent; county powers and duties.

(1) It is the intent of the Legislature to encourage counties to develop a continuum of nonsecure detention services for the purpose of enhancing, developing, and expanding the availability of such services to juveniles requiring nonsecure detention.

(2) A county may enhance, develop, or expand nonsecure detention services as needed with private or public providers. Grants from the Commission Grant

Program and aid from the Community-based Juvenile Services Aid Program under the Juvenile Services Act and the federal Juvenile Justice and Delinquency Prevention Act of 1974 may be used to fund nonsecure detention services. Each county shall routinely review services provided by contract providers and modify services as needed.

Source: Laws 2000, LB 1167, § 3; Laws 2001, LB 640, § 13; Laws 2013, LB561, § 52.

Cross References

Juvenile Services Act, see section 43-2401.

ARTICLE 37

COURT APPOINTED SPECIAL ADVOCATE ACT

Section

- 43-3701. Act, how cited.
- 43-3709. Volunteers; minimum qualifications.
- 43-3713. Cooperation; notice required.
- 43-3717. Legislative findings.
- 43-3718. Court Appointed Special Advocate Fund; created; use; investment.
- 43-3719. Supreme Court; award grants; purposes.
- 43-3720. Applicant awarded grant; report; contents; Supreme Court; powers.

43-3701 Act, how cited.

Sections 43-3701 to 43-3720 shall be known and may be cited as the Court Appointed Special Advocate Act.

Source: Laws 2000, LB 1167, § 24; Laws 2011, LB463, § 18.

43-3709 Volunteers; minimum qualifications.

(1) The minimum qualifications for any prospective court appointed special advocate volunteer are that he or she shall:

(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;

(b) Be willing to commit to the court for a minimum of one year of service to a child;

(c) Complete an application, including providing background information required pursuant to subsection (2) of this section;

(d) Participate in a screening interview; and

(e) Participate in the training required pursuant to section 43-3708.

(2) As required background screening, the program director shall obtain the following information regarding a volunteer applicant:

(a) A check of the applicant's criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol;

(b) A check of his or her record with the central registry of child protection cases maintained under section 28-718;

(c) A check of his or her driving record; and

(d) At least three references who will attest to the applicant's character, judgment, and suitability for the position of a court appointed special advocate volunteer.

(3) If the applicant has lived in Nebraska for less than twelve months, the program director shall obtain the records required in subdivisions (2)(a) through (2)(c) of this section from all other jurisdictions in which the applicant has lived during the preceding year.

Source: Laws 2000, LB 1167, § 32; Laws 2005, LB 116, § 22; Laws 2014, LB853, § 27.

Effective date July 18, 2014.

43-3713 Cooperation; notice required.

(1) All government agencies, service providers, professionals, school districts, school personnel, parents, and families shall cooperate with all reasonable requests of the court appointed special advocate volunteer. The volunteer shall cooperate with all government agencies, service providers, professionals, school districts, school personnel, parents, and families.

(2) The volunteer shall be notified in a timely manner of all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed. The court in its discretion may proceed notwithstanding failure to notify the volunteer or failure of the volunteer to appear.

Source: Laws 2000, LB 1167, § 36; Laws 2009, LB35, § 30.

43-3717 Legislative findings.

The Legislature finds and declares that:

(1) The safety and well-being of abused and neglected children throughout the State of Nebraska should be of paramount concern to the state and its residents;

(2) Court appointed special advocate volunteers provide a unique and vital service to the children they represent and work to ensure the safety and well-being of abused and neglected children;

(3) Court appointed special advocate volunteers have provided, in many cases, the judges who adjudicate cases with essential information that has not only ensured the safety and well-being of abused and neglected children throughout Nebraska, but has also saved the state thousands of dollars; and

(4) Providing resources through a grant program will increase the savings to the state through court appointed special advocate programs.

Source: Laws 2011, LB463, § 14.

43-3718 Court Appointed Special Advocate Fund; created; use; investment.

The Court Appointed Special Advocate Fund is created. The fund shall be under the control of the Supreme Court and administered by the State Court Administrator. The fund shall be used for grants as provided in section 43-3719. The fund shall consist of transfers, grants, donations, gifts, devises, and bequests. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and

the Nebraska State Funds Investment Act. Interest earned shall be credited back to the fund.

Source: Laws 2011, LB463, § 15; Laws 2013, LB199, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

43-3719 Supreme Court; award grants; purposes.

(1) The Supreme Court shall award grants from the Court Appointed Special Advocate Fund as provided in subsection (2) of this section to any court appointed special advocate program that applies for the grant and:

(a) Is a nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code;

(b) Has the ability to operate statewide; and

(c) Has an affiliation agreement with local programs that meet the requirements of section 43-3706.

(2) The Supreme Court shall award grants up to the amount credited to the fund per fiscal year as follows:

(a) Up to ten thousand dollars may be used by the court to administer this section;

(b) Of the remaining amount, eighty percent shall be awarded as grants used to recruit new court appointed special advocate volunteers and to defray the cost of training court appointed special advocate volunteers;

(c) Of the remaining amount, ten percent shall be awarded as grants used to create innovative programming to implement the Court Appointed Special Advocate Act; and

(d) Of the remaining amount, ten percent shall be awarded as grants used to expand court appointed special advocate programs into counties that have no programs or limited programs.

Source: Laws 2011, LB463, § 16; Laws 2013, LB199, § 19.

43-3720 Applicant awarded grant; report; contents; Supreme Court; powers.

(1) Each applicant who is awarded a grant under section 43-3719 shall provide the Supreme Court, Clerk of the Legislature, and Governor prior to December 31 of each year a report regarding the grant detailing:

(a) The number of court appointed special advocate volunteers trained during the previous fiscal year;

(b) The cost of training the court appointed special advocate volunteers trained during the previous fiscal year;

(c) The number of court appointed special advocate volunteers recruited during the previous fiscal year;

(d) A description of any programs described in subdivision (2)(d) of section 43-3719;

(e) The total number of courts being served by court appointed special advocate programs during the previous fiscal year; and

(f) The total number of children being served by court appointed special advocate volunteers during the previous fiscal year.

The report submitted to the Clerk of the Legislature shall be submitted electronically.

(2) The Supreme Court, as part of any application process required for a grant pursuant to section 43-3719, may require the applicant to report the information required pursuant to subsection (1) of this section.

Source: Laws 2011, LB463, § 17; Laws 2012, LB782, § 52; Laws 2013, LB199, § 20.

ARTICLE 40

CHILDREN'S BEHAVIORAL HEALTH

Section

43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court; and

(g) The probation administrator or his or her designee.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1; Laws 2008, LB928, § 14; Laws 2009, LB540, § 1.

ARTICLE 41

NEBRASKA JUVENILE SERVICE DELIVERY PROJECT

Section

- 43-4101. Nebraska Juvenile Service Delivery Project; established; purpose; evaluation; reimbursement for costs; Department of Health and Human Services; duties.
- 43-4102. Nebraska Juvenile Service Delivery Project; expansion; funding; information-sharing process; established.

43-4101 Nebraska Juvenile Service Delivery Project; established; purpose; evaluation; reimbursement for costs; Department of Health and Human Services; duties.

(1) The Nebraska Juvenile Service Delivery Project shall be established as a pilot program administered by the Office of Probation Administration. The pilot program shall be evaluated by the University of Nebraska Medical Center's College of Public Health. The project may be expanded by the Office of Probation Administration. The purpose of the pilot program is to (a) provide access to services in the community for juveniles placed on probation, (b) prevent unnecessary commitment of juveniles to the Department of Health and Human Services and to the Office of Juvenile Services, (c) eliminate barriers preventing juveniles from receiving needed services, (d) prevent unnecessary penetration of juveniles further into the juvenile justice system, (e) enable the juvenile's needs to be met in the least intrusive and least restrictive manner while maintaining the safety of the juvenile and the community, (f) reduce the duplication of resources within the juvenile justice system through intense coordinated case management and supervision, and (g) use evidence-based practices and responsive case management to improve outcomes for adjudicated juveniles.

(2) On or before July 1, 2013, the Department of Health and Human Services shall apply for reimbursement under Title IV-E of the federal Social Security Act, as amended, for reimbursable costs associated with the Nebraska Juvenile Service Delivery Project. The reimbursed funds received by the department shall be remitted to the State Treasurer for credit to the Probation Program Cash Fund for reimbursement of expenses incurred by the Office of Probation Administration pursuant to the Nebraska Juvenile Service Delivery Project.

Source: Laws 2012, LB985, § 1; Laws 2013, LB269, § 4.

43-4102 Nebraska Juvenile Service Delivery Project; expansion; funding; information-sharing process; established.

(1) It is the intent of the Legislature that the Nebraska Juvenile Service Delivery Project, established as a pilot program under section 43-4101 within the Office of Probation Administration, be expanded statewide in a three-step, phase-in process beginning July 1, 2013, with full implementation by July 1, 2014. The expansion of the project will result in the Office of Probation Administration taking over the duties of the Office of Juvenile Services with respect to its previous functions of community supervision and parole of juvenile law violators and of evaluations for such juveniles. The Office of Juvenile Services shall continue for the purpose of operating the youth rehabilitation and treatment centers and the care and custody of the juveniles placed at such centers. Expansion of the project shall be funded by the transfer of funds

from the Department of Health and Human Services and the Office of Juvenile Services used to fully fund community-based services and juvenile parole to the Office of Probation Administration.

(2) There shall be established through the use of technology an information-sharing process to support and enhance the exchange of information between the Department of Health and Human Services, the Office of Probation Administration, and the Nebraska Commission on Law Enforcement and Criminal Justice. It is the intent of the Legislature to appropriate two hundred fifty thousand dollars from the General Fund to the Office of Probation Administration to facilitate the information-sharing process.

(3) Costs incurred on behalf of juveniles under the Nebraska Juvenile Service Delivery Project shall be paid as provided in section 43-290.01.

Source: Laws 2013, LB561, § 55; Laws 2014, LB464, § 32.
Operative date July 18, 2014.

ARTICLE 42

NEBRASKA CHILDREN'S COMMISSION

Section

- 43-4201. Legislative findings, declarations, and intent.
- 43-4202. Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant; termination of commission.
- 43-4203. Nebraska Children's Commission; duties; establish networks; service area; develop strategies; committees created; use of facilitated conferencing.
- 43-4204. Statewide strategic plan; created; considerations; lead agency; duties; commission; duties.
- 43-4205. Analysis of prevention and intervention programs and services; Department of Health and Human Services; duties.
- 43-4206. Department of Health and Human Services; cooperate with Nebraska Children's Commission.
- 43-4207. Nebraska Children's Commission; reports.
- 43-4208. Title IV-E Demonstration Project Committee; created; members; duties; powers; implementation plan; contents; report; Nebraska Children's Commission; powers; Office of Probation Administration; duties.
- 43-4209. Demonstration project; Department of Health and Human Services; report.
- 43-4210. Demonstration project; Department of Health and Human Services; apply for waiver.
- 43-4211. Foster care payments; legislative findings.
- 43-4212. Repealed. Laws 2013, LB 530, § 9.
- 43-4213. Foster parents; additional stipend; payment; administrative fee.
- 43-4214. Foster care reimbursement; foster care system; legislative findings and intent.
- 43-4215. Reimbursement rate recommendations; Division of Children and Family Services of Department of Health and Human Services; implementation; pilot project; reports; contents.
- 43-4216. Foster Care Reimbursement Rate Committee; members; terms; vacancies.
- 43-4217. Foster Care Reimbursement Rate Committee; duties; subcommittees; reports.

43-4201 Legislative findings, declarations, and intent.

(1) The Legislature finds and declares that:

(a) The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report of the study that was conducted under Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011;

(b) Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;

(c) To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:

(i) The integration, coordination, and accessibility of all services provided by the state, whether directly or pursuant to contract;

(ii) Reasonable access to appropriate services statewide and efficiency in service delivery; and

(iii) The availability of accurate and complete data as well as ongoing data analysis to identify important trends and problems as they arise; and

(d) As the primary state agency serving children and families, the Department of Health and Human Services must exemplify leadership, responsiveness, transparency, and efficiency and program managers within the agency must strive cooperatively to ensure that their programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

(2) It is the intent of the Legislature in creating the Nebraska Children's Commission to provide for the needs identified in subsection (1) of this section, to provide a broad restructuring of the goals of the child welfare system, and to provide a structure to the commission that maintains the framework of the three branches of government and their respective powers and duties.

Source: Laws 2012, LB821, § 1.

43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant; termination of commission.

(1) The Nebraska Children's Commission is created as a high-level leadership body to (a) create a statewide strategic plan for reform of the child welfare system programs and services in the State of Nebraska and (b) review the operations of the Department of Health and Human Services regarding child welfare programs and services and recommend, as a part of the statewide strategic plan, options for attaining the legislative intent stated in section 43-4201, either by the establishment of a new division within the department or the establishment of a new state agency to provide all child welfare programs and services which are the responsibility of the state. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare programs and services.

(2) The commission shall include the following voting members:

(a) The executive director of the Foster Care Review Office; and

(b) Seventeen members appointed by the Governor. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare system and shall include: (i) A director of a child advocacy center; (ii) an administrator of a behavioral health region established pursuant to section 71-807; (iii) a community representative from each of the service areas designated pursuant to section 81-3116. In the eastern service area designated pursuant to such section, the representative may be from a lead agency of a pilot project established under section 68-1212 or a collaborative member; (iv) a prosecuting attorney who practices in juvenile court; (v) a guardian ad litem; (vi) a biological parent currently or previously involved in the child welfare system; (vii) a foster parent; (viii) a court appointed special advocate volunteer; (ix) a member of a local foster care review board; (x) a child welfare service

agency that directly provides a wide range of child welfare services and is not a member of a lead agency collaborative; (xi) a young adult previously in foster care; (xii) a representative of a child advocacy organization that deals with legal and policy issues that include child welfare; and (xiii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed within thirty days after June 5, 2013, from a list of three nominees submitted by the Commission on Indian Affairs.

(3) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (a) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (b) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (c) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (d) three persons appointed by the State Court Administrator; (e) the chief executive officer of the Department of Health and Human Services or his or her designee; (f) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her designee; and (g) the Inspector General of Nebraska Child Welfare. The nonvoting, ex officio members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes of each of their respective bodies, gather information for the commission, and provide information back to their respective bodies from the commission. The nonvoting, ex officio members shall not vote on decisions by the commission or on the direction or development of the statewide strategic plan pursuant to section 43-4204.

(4) The commission shall meet within sixty days after April 12, 2012, and shall select from among its members a chairperson and vice-chairperson and conduct any other business necessary to the organization of the commission. The commission shall meet not less often than once every three months, and meetings of the commission may be held at any time on the call of the chairperson. The commission may hire staff to carry out the responsibilities of the commission. For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission shall hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in developing the statewide strategic plan. The commission shall terminate on June 30, 2016, unless continued by the Legislature.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for their actual and necessary expenses as members of such commission as provided in sections 81-1174 to 81-1177.

Source: Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5.

43-4203 Nebraska Children's Commission; duties; establish networks; service area; develop strategies; committees created; use of facilitated conferencing.

(1) The Nebraska Children's Commission shall work with administrators from each of the service areas designated pursuant to section 81-3116, the teams created pursuant to section 28-728, local foster care review boards, child advocacy centers, the teams created pursuant to the Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare programs and services to establish networks in each of such service areas. Such networks shall permit collaboration to strengthen the continuum of services available to child welfare agencies and to provide resources for children and juveniles outside the child protection system. Each service area shall develop its own unique strategies to be included in the statewide strategic plan. The Department of Health and Human Services shall assist in identifying the needs of each service area.

(2)(a) The commission shall create a committee to examine state policy regarding the prescription of psychotropic drugs for children who are wards of the state and the administration of such drugs to such children. Such committee shall review the policy and procedures for prescribing and administering such drugs and make recommendations to the commission for changes in such policy and procedures.

(b) The commission shall create a committee to examine the structure and responsibilities of the Office of Juvenile Services as they exist on April 12, 2012. Such committee shall review the role and effectiveness of the youth rehabilitation and treatment centers in the juvenile justice system and make recommendations to the commission on the future role of the youth rehabilitation and treatment centers in the juvenile justice continuum of care, including what populations they should serve and what treatment services should be provided at the centers in order to appropriately serve those populations. Such committee shall also review how mental and behavioral health services are provided to juveniles in secure residential placements and the need for such services throughout Nebraska and make recommendations to the commission relating to those systems of care in the juvenile justice system. The committee shall collaborate with the University of Nebraska at Omaha, Juvenile Justice Institute, the University of Nebraska Medical Center, Center for Health Policy, the behavioral health regions as established in section 71-807, and state and national juvenile justice experts to develop recommendations. If the committee's recommendations include maintaining the Youth Rehabilitation and Treatment Center-Kearney, the recommendation shall include a plan to implement a rehabilitation and treatment model by upgrading the center's physical structure, staff, and staff training and the incorporation of evidence-based treatments and programs. The recommendations shall be delivered to the commission and electronically to the Judiciary Committee of the Legislature by December 1, 2013.

(c) The commission may organize committees as it deems necessary. Members of the committees may be members of the commission or may be appointed, with the approval of the majority of the commission, from individuals with knowledge of the committee's subject matter, professional expertise to assist the committee in completing its assigned responsibilities, and the ability to collaborate within the committee and with the commission to carry out the powers and duties of the commission.

(d) The Title IV-E Demonstration Project Committee created pursuant to section 43-4208 and the Foster Care Reimbursement Rate Committee created pursuant to section 43-4212 are under the jurisdiction of the commission.

(3) The commission shall work with the office of the State Court Administrator, as appropriate, and entities which coordinate facilitated conferencing as described in section 43-247.03. Facilitated conferencing shall be included in statewide strategic plan discussions by the commission. Facilitated conferencing shall continue to be utilized and maximized, as determined by the court of jurisdiction, during the development of the statewide strategic plan. Funding and contracting with mediation centers approved by the Office of Dispute Resolution to provide facilitated conferencing shall continue to be provided by the office of the State Court Administrator at an amount of no less than the General Fund transfer under subsection (1) of section 43-247.04.

(4) The commission shall gather information and communicate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Cross-over Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(5) The commission shall coordinate and gather information about the progress and outcomes of the Nebraska Juvenile Service Delivery Project established pursuant to section 43-4101.

Source: Laws 2012, LB821, § 3; Laws 2013, LB269, § 6; Laws 2013, LB530, § 6; Laws 2013, LB561, § 56; Laws 2014, LB464, § 33.
Operative date July 18, 2014.

43-4204 Statewide strategic plan; created; considerations; lead agency; duties; commission; duties.

(1) The Nebraska Children's Commission shall create a statewide strategic plan to carry out the legislative intent stated in section 43-4201 for child welfare program and service reform in Nebraska. In developing the statewide strategic plan, the commission shall consider, but not be limited to:

(a) The potential of contracting with private nonprofit entities as a lead agency, subject to the requirements of subsection (2) of this section. Such lead-agency utilization shall be in a manner that maximizes the strengths, experience, skills, and continuum of care of the lead agencies. Any lead-agency contracts entered into or amended after April 12, 2012, shall detail how qualified licensed agencies as part of efforts to develop the local capacity for a community-based system of coordinated care will implement community-based care through competitively procuring either (i) the specific components of foster care and related services or (ii) comprehensive services for defined eligible populations of children and families;

(b) Provision of leadership for strategies to support high-quality evidence-based prevention and early intervention services that reduce risk and enhance protection for children;

(c) Realignment of service areas designated pursuant to section 81-3116 to be coterminous with the judicial districts described in section 24-301.02;

(d) Identification of the type of information needed for a clear and thorough analysis of progress on child welfare indicators; and

(e) Such other elements as the commission deems necessary and appropriate.

(2) A lead agency used after April 12, 2012, shall:

(a) Have a board of directors of which at least fifty-one percent of the membership is comprised of Nebraska residents who are not employed by the lead agency or by a subcontractor of the lead agency;

(b) Complete a readiness assessment as developed by the Department of Health and Human Services to determine the lead agency's viability. The readiness assessment shall evaluate organizational, operational, and programmatic capabilities and performance, including review of: The strength of the board of directors; compliance and oversight; financial risk management; financial liquidity and performance; infrastructure maintenance; funding sources, including state, federal, and external private funding; and operations, including reporting, staffing, evaluation, training, supervision, contract monitoring, and program performance tracking capabilities;

(c) Have the ability to provide directly or by contract through a local network of providers the services required of a lead agency. A lead agency shall not directly provide more than thirty-five percent of direct services required under the contract; and

(d) Provide accountability for meeting the outcomes and performance standards related to child welfare services established by Nebraska child welfare policy and the federal government.

(3) The commission shall review the operations of the department regarding child welfare programs and services and recommend, as a part of the statewide strategic plan, options for attaining the legislative intent stated in section 43-4201, either by the establishment of a new division within the department or the establishment of a new state agency to provide all child welfare programs and services which are the responsibility of the state.

Source: Laws 2012, LB821, § 4.

43-4205 Analysis of prevention and intervention programs and services; Department of Health and Human Services; duties.

Within three months after April 12, 2012, the Department of Health and Human Services, with direction from the Nebraska Children's Commission, shall contract with an independent entity specializing in medicaid analysis to conduct a cross-system analysis of current prevention and intervention programs and services provided by the department for the safety, health, and well-being of children and funding sources to (1) identify state General Funds being used, in order to better utilize federal funds, (2) identify resources that could be better allocated to more effective services to at-risk children and juveniles transitioning to home-based and school-based interventions, and (3) provide information which will allow the replacement of state General Funds for services to at-risk children and juveniles with federal funds, with the goal of

expanding the funding base for such services while reducing overall state General Fund expenditures on such services.

Source: Laws 2012, LB821, § 5.

43-4206 Department of Health and Human Services; cooperate with Nebraska Children's Commission.

The Department of Health and Human Services shall fully cooperate with the activities of the Nebraska Children's Commission. The department shall provide to the commission all requested information on children and juveniles in Nebraska, including, but not limited to, departmental reports, data, programs, processes, finances, and policies. The department shall collaborate with the commission regarding the development of a plan for a statewide automated child welfare information system to integrate child welfare information into one system if the One Hundred Second Legislature, Second Session, 2012, enacts legislation to require the development of such a plan. The department shall coordinate and collaborate with the commission regarding engagement of an evaluator to provide an evaluation of the child welfare system if the One Hundred Second Legislature, Second Session, 2012, enacts legislation to require such evaluation.

Source: Laws 2012, LB821, § 6.

43-4207 Nebraska Children's Commission; reports.

The Nebraska Children's Commission shall provide a written report to the Health and Human Services Committee of the Legislature on the status of its activities on or before August 1, 2012, September 15, 2012, and November 1, 2012. The commission shall complete the statewide strategic plan required pursuant to section 43-4204 and provide a written report to the Health and Human Services Committee of the Legislature and the Governor on or before December 15, 2012.

Source: Laws 2012, LB821, § 7.

43-4208 Title IV-E Demonstration Project Committee; created; members; duties; powers; implementation plan; contents; report; Nebraska Children's Commission; powers; Office of Probation Administration; duties.

(1)(a) The Title IV-E Demonstration Project Committee is created. The members of the committee shall be appointed by the Director of Children and Family Services or his or her designee and shall include representatives of the Department of Health and Human Services and representatives of child welfare stakeholder entities, including one advocacy organization which deals with legal and policy issues that include child welfare, one advocacy organization the singular focus of which is issues impacting children, two child welfare service agencies that provide a wide range of child welfare services, and one entity which is a lead agency as of March 1, 2012. Members of the committee shall have experience or knowledge in the area of child welfare that involves Title IV-E eligibility criteria and activities. In addition, there shall be at least one ex officio member of the committee, appointed by the State Court Administrator. The ex officio member or members shall not be involved in decisionmaking, implementation plans, or reporting but may attend committee meetings, provide information to the committee about the processes and programs of the court system involving children and juveniles, and inform the State Court

Administrator of the committee's activities. The committee shall be convened by the director within thirty days after April 12, 2012.

(b) The committee shall review, report, and provide recommendations regarding the application of the Department of Health and Human Services for a demonstration project pursuant to 42 U.S.C. 1320a-9 to obtain a waiver as provided in 42 U.S.C. 1320a-9(b), as such section existed on January 1, 2012. The committee may engage a consultant with expertise in Title IV-E demonstration project applications and requirements.

(c) The committee shall (i) review Nebraska's current status of Title IV-E participation and penetration rates, (ii) review strategies and solutions for raising Nebraska's participation rate and reimbursement for Title IV-E in child placement, case management, replacement, training, adoption, court findings, and proceedings, and (iii) recommend specific actions for addressing barriers to participation and reimbursement.

(d) The committee shall provide an implementation plan and a timeline for making application for a Title IV-E waiver. The implementation plan shall support and align with the goals of the statewide strategic plan required pursuant to section 43-4204, including, but not limited to, maximizing federal funding to be able to utilize state and federal funding for a broad array of services for children, including prevention, intervention, and community-based, in-home, and out-of-home services to attain positive outcomes for the safety and well-being of and to expedite permanency for children. The committee shall report on its activities to the Health and Human Services Committee of the Legislature on or before July 1, 2012, September 1, 2012, and November 1, 2012, and shall provide a final written report to the department, the Health and Human Services Committee of the Legislature, and the Governor by December 15, 2012.

(e) The Title IV-E Demonstration Project Committee is under the jurisdiction of the Nebraska Children's Commission created pursuant to section 43-4202. The commission may make changes it deems necessary to comply with this subsection to facilitate the application for such demonstration project.

(2) The committee's implementation plan shall address the demonstration project designed to meet the requirements of 42 U.S.C. 1320a-9, including, but not limited to, the following:

(a) Increasing permanency for children by reducing the time in foster care placements when possible and promoting a successful transition to adulthood for older youth;

(b) Increasing positive outcomes for children and families in their homes and communities, including tribal communities, and improving the safety and well-being of children;

(c) Preventing child abuse and neglect and the reentry of children into foster care; and

(d) Considering the options of developing a program to (i) permit foster care maintenance payments to be made under Title IV-E of the federal Social Security Act, as such act existed on January 1, 2012, to a long-term therapeutic family treatment center on behalf of children residing in such a center or (ii) identify and address domestic violence that endangers children and results in the placement of children in foster care.

(3) The implementation plan for the demonstration project shall include information showing:

(a) The ability and capacity of the department to effectively use the authority to conduct a demonstration project under this section by identifying changes the department has made or plans to make in policies, procedures, or other elements of the state's child welfare program that will enable the state to successfully achieve the goal or goals of the project; and

(b) That the department has implemented, or plans to implement within three years after the date of submission of its application under this section or within two years after the date on which the United States Secretary of Health and Human Services approves such application, whichever is later, at least two of the child welfare program improvement policies described in 42 U.S.C. 1320a-9(a)(7), as such section existed on January 1, 2012.

(4) At least one of the child welfare program improvement policies to be implemented by the Department of Health and Human Services under the demonstration project shall be a policy that the state has not previously implemented as of the date of submission of its application under this section.

(5) On or before July 1, 2013, the Department of Health and Human Services, in conjunction with the Office of Probation Administration, shall develop a policy for reimbursement of all allowable foster care maintenance costs as provided under Title IV-E of the federal Social Security Act, 42 U.S.C. 672, as such act and section existed on January 1, 2013.

(6) For purposes of this section, long-term therapeutic family treatment center has the definition found in 42 U.S.C. 1320a-9(a)(8), as such section existed on January 1, 2012.

Source: Laws 2012, LB820, § 1; Laws 2013, LB269, § 7.

43-4209 Demonstration project; Department of Health and Human Services; report.

The Department of Health and Human Services shall report to the Health and Human Services Committee of the Legislature by September 15, 2012, on the status of the application for the demonstration project under section 43-4208.

Source: Laws 2012, LB820, § 2.

43-4210 Demonstration project; Department of Health and Human Services; apply for waiver.

On or before September 30, 2013, the Department of Health and Human Services shall apply to the United States Secretary of Health and Human Services for approval of a demonstration project pursuant to 42 U.S.C. 1320a-9 to obtain a waiver as provided in 42 U.S.C. 1320a-9(b), as such section existed on January 1, 2012.

Source: Laws 2012, LB820, § 3.

43-4211 Foster care payments; legislative findings.

The Legislature finds that:

(1) Surveys of foster parents demonstrate that the safety net provided by foster families is fragile and damaged;

(2) Increased focus on recruiting and retaining high quality, trained, and experienced foster parents should be a priority under reform of the child welfare system in Nebraska;

(3) A 2007 study entitled Foster Care Minimum Adequate Rates for Children completed by Children's Rights, the National Foster Parent Association, and the University of Maryland School of Social Work analyzed foster care maintenance payments under Title IV-E of the federal Social Security Act, as amended, which are defined as the cost of providing food, clothing, shelter, daily supervision, school supplies, personal incidentals, insurance, and travel for visitation with the biological family;

(4) The study set a basic foster care payment rate, calculated by (a) analyzing consumer expenditure data reflecting the costs of caring for a child, (b) identifying and accounting for additional costs specific to children in foster care, and (c) applying a geographic cost-of-living adjustment in order to develop rates for each of the fifty states and the District of Columbia. The rate includes adequate funds to meet a foster child's basic physical needs and the cost of activities such as athletic and artistic programs which are important for children who have been traumatized or isolated by abuse, neglect, and placement in foster care;

(5) The study found that Nebraska's foster care payment rates were the lowest in the country, with an average payment of two hundred twenty-six dollars per month for a child two years of age. The next lowest foster care payment rate was Missouri, paying two hundred seventy-one dollars per month; and

(6) Foster care placements with relatives are more stable and more likely to result in legal guardianship with a relative of the child. Children in relative placements are less likely to reenter the child welfare system after reunification with their parents and report that they feel more loved and less stigmatized when living with family.

Source: Laws 2012, LB820, § 4.

43-4212 Repealed. Laws 2013, LB 530, § 9.

43-4213 Foster parents; additional stipend; payment; administrative fee.

In recognition of Nebraska foster parents' essential contribution to the safety and well-being of Nebraska's foster children and the need for additional compensation for the services provided by Nebraska foster parents, beginning July 1, 2012, through June 30, 2014, all foster parents providing foster care in Nebraska, including traditional, agency-based, licensed, approved, relative placement, and child-specific foster care, shall receive an additional stipend of three dollars and ten cents per day per child. The stipend shall be in addition to the current foster care reimbursement rates for relatives and foster parents contracting with the Department of Health and Human Services and in addition to the relative and tiered rate paid to a contractor for agency-based foster parents. The additional stipend shall be paid monthly through the agency that is contracting with the foster parent or, in the case of a foster parent contracting with the department, directly from the department. The contracting agency shall receive an administrative fee of twenty-five cents per child per day for processing the payments for the benefit of the foster parents and the state, which administrative fee shall be paid monthly by the state. The administrative

fee shall not reduce the stipend of three dollars and ten cents provided by this section.

Source: Laws 2012, LB820, § 6; Laws 2013, LB530, § 7.

43-4214 Foster care reimbursement; foster care system; legislative findings and intent.

(1) The Legislature (a) finds that it was the intent of sections 43-4208 to 43-4213 to provide bridge funding to bring Nebraska's foster care reimbursement rates in line with foster care reimbursement rates in the rest of the country and (b) recognizes the importance of a stable payment to foster parents to ensure that families are able to budget for needs while caring for foster children.

(2) The Legislature further finds that Nebraska's foster care system has begun to stabilize. In recognition of the essential contributions of foster parents and foster care providers to foster children in Nebraska, it is the intent of the Legislature to continue existing contractual arrangements for payment to ensure the continued stabilization of the foster care system in Nebraska.

(3) It is the intent of the Legislature:

(a) To ensure that fair rates continue into the future to stem attrition of foster parents and to recruit, support, and maintain high-quality foster parents;

(b) That foster care reimbursement rates accurately reflect the cost of raising the child in the care of the state;

(c) To ensure that contracted foster care service provider agencies do not pay increased rates out of budgets determined in contracts with the Department of Health and Human Services prior to any change in rates;

(d) To maintain comparable foster care reimbursement rates to ensure retention and recruitment of high-quality foster parents and to ensure that foster children's best interests are served; and

(e) To appropriate funds to permanently replace the bridge funding described in subsection (1) of this section and provide the necessary additional funds to bring foster care reimbursement rates in compliance with the recommendations of the research and study completed by the Foster Care Reimbursement Rate Committee as required pursuant to section 43-4212 as such section existed before June 5, 2013.

Source: Laws 2013, LB530, § 1.

43-4215 Reimbursement rate recommendations; Division of Children and Family Services of Department of Health and Human Services; implementation; pilot project; reports; contents.

(1) On or before July 1, 2014, the Division of Children and Family Services of the Department of Health and Human Services shall implement the reimbursement rate recommendations of the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(2)(a) On or before July 1, 2013, the Division of Children and Family Services of the Department of Health and Human Services shall develop a pilot project as provided in this subsection to implement the standardized level of care assessment tools recommended by the Foster Care Reimbursement Rate Com-

mittee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(b)(i) The pilot project shall comprise two groups: One in an urban area and one in a rural area. The size of each group shall be determined by the division to ensure an accurate estimate of the effectiveness and cost of implementing such tools statewide.

(ii) The Nebraska Children's Commission shall review and provide a progress report on the pilot project by October 1, 2013, to the department and electronically to the Health and Human Services Committee of the Legislature; shall provide to the department and electronically to the committee by December 1, 2013, a report including recommendations and any legislation necessary, including appropriations, to adopt the recommendations, regarding the adaptation or continuation of the implementation of a statewide standardized level of care assessment; and shall provide to the department and electronically to the committee by February 1, 2014, a final report and final recommendations of the commission.

Source: Laws 2013, LB530, § 2.

43-4216 Foster Care Reimbursement Rate Committee; members; terms; vacancies.

(1) On or before January 1, 2016, the Nebraska Children's Commission shall appoint a Foster Care Reimbursement Rate Committee. The commission shall reconvene the Foster Care Reimbursement Rate Committee every four years thereafter.

(2) The Foster Care Reimbursement Rate Committee shall consist of no fewer than nine members, including:

(a) The following voting members: (i) Representatives from a child welfare agency that contracts directly with foster parents, from each of the service areas designated pursuant to section 81-3116; (ii) a representative from an advocacy organization which deals with legal and policy issues that include child welfare; (iii) a representative from an advocacy organization, the singular focus of which is issues impacting children; (iv) a representative from a foster and adoptive parent association; (v) a representative from a lead agency; (vi) a representative from a child advocacy organization that supports young adults who were in foster care as children; (vii) a foster parent who contracts directly with the Department of Health and Human Services; and (viii) a foster parent who contracts with a child welfare agency; and

(b) The following nonvoting, ex officio members: (i) The chief executive officer of the Department of Health and Human Services or his or her designee and (ii) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system. The nonvoting, ex officio members of the committee may attend committee meetings and participate in discussions of the committee and shall gather and provide information to the committee on the policies, programs, and processes of each of their respective bodies. The nonvoting, ex officio members shall not vote on decisions or recommendations by the committee.

(3) Members of the committee shall serve for terms of four years and until their successors are appointed and qualified. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur. If the Nebraska Children's Commission has terminated, such appointments shall be made and vacancies filled by the Governor with the approval of a majority of the Legislature.

Source: Laws 2013, LB530, § 3.

43-4217 Foster Care Reimbursement Rate Committee; duties; subcommittees; reports.

(1) The Foster Care Reimbursement Rate Committee appointed pursuant to section 43-4216 shall review and make recommendations in the following areas: Foster care reimbursement rates, the statewide standardized level of care assessment, and adoption assistance payments as required by section 43-117. In making recommendations to the Legislature, the committee shall use the then-current foster care reimbursement rates as the beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze then-current consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(2) The committee shall review the role and effectiveness of and make recommendations on the statewide standardized level of care assessment containing standardized criteria to determine a foster child's placement needs and to identify the appropriate foster care reimbursement rate. The committee shall review other states' assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment review and the standard statewide foster care reimbursement rate structure. The committee shall ensure the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure provide incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received. The committee shall review and make recommendations on assistance payments to adoptive parents as required by section 43-117. The committee shall make recommendations to ensure that changes in foster care reimbursement rates do not become a disincentive to permanency.

(3) The committee may organize subcommittees as it deems necessary. Members of the subcommittees may be members of the committee or may be appointed, with the approval of the majority of the committee, from individuals with knowledge of the subcommittee's subject matter, professional expertise to assist the subcommittee in completing its assigned responsibilities, and the ability to collaborate within the subcommittee.

(4) The Foster Care Reimbursement Rate Committee shall provide electronic reports with its recommendation to the Health and Human Services Committee of the Legislature on July 1, 2016, and every four years thereafter.

Source: Laws 2013, LB530, § 4.

ARTICLE 43
OFFICE OF INSPECTOR GENERAL OF
NEBRASKA CHILD WELFARE ACT

Section

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43-4301 Act, how cited.

Sections 43-4301 to 43-4331 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 8.

43-4302 Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;

(b) Assist in improving operations of the department and the Nebraska child welfare system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of

children in the Nebraska child welfare system. Confusion of the roles, responsibilities, and accountability structures between individuals, private contractors, and agencies in the current system make it difficult to monitor and oversee the Nebraska child welfare system; and

(d) Provide a process for investigation and review to determine if individual complaints and issues of investigation and inquiry reveal a problem in the child welfare system, not just individual cases, that necessitates legislative action for improved policies and restructuring of the child welfare system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2012, LB821, § 9; Laws 2013, LB39, § 1.

43-4303 Definitions; where found.

For purposes of the Office of Inspector General of Nebraska Child Welfare Act, the definitions found in sections 43-4304 to 43-4316 apply.

Source: Laws 2012, LB821, § 10.

43-4304 Administrator, defined.

Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency or licensed child care facility.

Source: Laws 2012, LB821, § 11.

43-4305 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2012, LB821, § 12.

43-4306 Director, defined.

Director means the chief executive officer of the department.

Source: Laws 2012, LB821, § 13.

43-4307 Inspector General, defined.

Inspector General means the Inspector General of Nebraska Child Welfare appointed under section 43-4317.

Source: Laws 2012, LB821, § 14.

43-4308 Licensed child care facility, defined.

Licensed child care facility means a facility or program licensed under the Child Care Licensing Act, the Children's Residential Facilities and Placing Licensure Act, or sections 71-1901 to 71-1906.01.

Source: Laws 2012, LB821, § 15; Laws 2013, LB265, § 36.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

43-4309 Malfeasance, defined.

Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty.

Source: Laws 2012, LB821, § 16.

43-4310 Management, defined.

Management means supervision of subordinate employees.

Source: Laws 2012, LB821, § 17.

43-4311 Misfeasance, defined.

Misfeasance means the improper performance of some act that a person may lawfully do.

Source: Laws 2012, LB821, § 18.

43-4312 Obstruction, defined.

Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow.

Source: Laws 2012, LB821, § 19.

43-4313 Office, defined.

Office means the office of Inspector General of Nebraska Child Welfare and includes the Inspector General and other employees of the office.

Source: Laws 2012, LB821, § 20.

43-4314 Private agency, defined.

Private agency means a child welfare agency that contracts with the department or the Office of Probation Administration or contracts to provide services to another child welfare agency that contracts with the department or the Office of Probation Administration.

Source: Laws 2012, LB821, § 21; Laws 2013, LB561, § 57.

43-4315 Record, defined.

Record means any recording, in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and includes, but is not

limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

Source: Laws 2012, LB821, § 22.

43-4316 Responsible individual, defined.

Responsible individual means a foster parent, a relative provider of foster care, or an employee of the department, a foster home, a private agency, a licensed child care facility, or another provider of child welfare programs and services responsible for the care or custody of records, documents, and files.

Source: Laws 2012, LB821, § 23.

43-4317 Office of Inspector General of Nebraska Child Welfare; created; purpose; Inspector General; appointment; term; certification; employees; removal.

(1) The office of Inspector General of Nebraska Child Welfare is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska child welfare system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department may be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of Nebraska Child Welfare. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 2012, LB821, § 24.

43-4318 Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act; and

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the Office of Probation Administration and death or serious injury in any case in which services are provided by the department to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less. The department and the Office of Probation Administration shall report all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children

and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28.

Effective date July 18, 2014.

Cross References

Child Protection and Family Safety Act, see section 28-710.

Uniform Credentialing Act, see section 38-101.

43-4319 Office; access to information and personnel; investigation.

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

Source: Laws 2012, LB821, § 26.

43-4320 Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. The office shall also maintain a toll-free telephone line for complaints. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department, a private agency, or a licensed child care facility, a foster parent, or any other provider of child welfare services or alleges a basis for discipline pursuant to the Uniform Credentialing Act. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, violation of a statute or of rules and regulations of the department, or a basis for discipline pursuant to the Uniform Credentialing Act;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation. A complaint alleging facts which, if verified, would provide a basis for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

(4) When a full investigation is opened on a private agency that contracts with the Office of Probation Administration, the Inspector General shall give notice of such investigation to the Office of Probation Administration.

Source: Laws 2012, LB821, § 27; Laws 2013, LB561, § 59.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4321 Cooperation with office; when required.

All employees of the department, all foster parents, and all owners, operators, managers, supervisors, and employees of private agencies, licensed child care

facilities, juvenile detention facilities, staff secure juvenile facilities, and other providers of child welfare services shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any law, statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Source: Laws 2012, LB821, § 28; Laws 2013, LB561, § 60.

43-4322 Failure to cooperate; effect.

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

Source: Laws 2012, LB821, § 29.

43-4323 Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned.

Source: Laws 2012, LB821, § 30.

43-4324 Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request of the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department, a foster parent, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be

maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

- (a) Production of all records requested;
- (b) A diligent search to ensure that all appropriate records are included; and
- (c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt child welfare programs or services. When advance notice to a foster parent or to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division, the private agency, the licensed child care facility, the juvenile detention facility, the staff secure juvenile facility, or the location of another provider of child welfare services, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a foster home, a departmental office, bureau, or division, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, a private agency, or another provider to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other provider's location to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or another provider to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, licensed child care facility, juvenile detention facility, staff secure

juvenile facility, or other service provider a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2012, LB821, § 31; Laws 2013, LB561, § 61.

43-4325 Reports of investigations; distribution; redact confidential information; powers of office.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(4) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 32.

43-4326 Department; provide direct computer access.

The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska child welfare system.

Source: Laws 2012, LB821, § 33.

43-4327 Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented

to the director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The Inspector General, upon notifying the Public Counsel and the director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2012, LB821, § 34.

43-4328 Report; director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.

(1) Within fifteen days after a report is presented to the director under section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, may consider the director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

Source: Laws 2012, LB821, § 35.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4329 Report or work product; no court review.

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 36.

43-4330 Inspector General; investigation of complaints; priority and selection.

The Office of Inspector General of Nebraska Child Welfare Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska child welfare system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

Source: Laws 2012, LB821, § 37.

43-4331 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committee shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committee regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. Such summary shall include summaries of alternative response cases under alternative response demonstration projects implemented in accordance with sections 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29.

Effective date July 18, 2014.

ARTICLE 44**CHILD WELFARE SERVICES**

Section

43-4401. Terms, defined.

43-4402. Legislative findings.

Section

- 43-4403. Legislative intent.
- 43-4404. Child welfare information system; department; duties; objectives; capacity.
- 43-4405. Statewide automated child welfare information system; report; contents.
- 43-4406. Child welfare services; report; contents.
- 43-4407. Service area administrator; lead agency; pilot project; annual survey; duties; reports.
- 43-4408. Department; reports; contents.
- 43-4409. Evaluation of child welfare system; nationally recognized evaluator; duties; qualification; evaluation; contents; report.
- 43-4410. Contract to provide child welfare services; evidence of financial stability and liquidity required; prohibited acts.

43-4401 Terms, defined.

For purposes of sections 43-4401 to 43-4409:

- (1) Department means the Department of Health and Human Services;
- (2) N-FOCUS system means the electronic data collection system in use by the department on April 12, 2012;
- (3) Pilot project means a case management lead agency model pilot project established by the department pursuant to Laws 2012, LB961; and
- (4) Service area means a geographic area administered by the department and designated pursuant to section 81-3116.

Source: Laws 2012, LB1160, § 1.

43-4402 Legislative findings.

The Legislature finds that:

- (1) Nebraska does not have the capacity to collect and analyze routinely and effectively the data required to inform policy decisions, child welfare service development, and evaluation of its child welfare system;
- (2) The N-FOCUS system is difficult to use and does not provide the appropriate data for meaningful monitoring of the child welfare system for children's safety, permanency, and wellness;
- (3) The N-FOCUS system does not easily integrate with other computer systems that have different purposes, capacities, file structures, and operating systems, resulting in silos of operation and information; and
- (4) The department needs leadership in developing a uniform electronic data collection system to collect and evaluate data regarding children served, the quality of child welfare services provided, and the outcomes produced by such child welfare services.

Source: Laws 2012, LB1160, § 2.

43-4403 Legislative intent.

It is the intent of the Legislature:

- (1) To provide for (a) legislative oversight of the child welfare system through an improved electronic data collection system, (b) improved child welfare outcome measurements through increased reporting by any lead agencies or the pilot project and the department, and (c) an independent evaluation of the child welfare system; and

(2) To develop an electronic data collection system to integrate child welfare information into one system to more effectively manage, track, and share information, especially in child welfare case management.

Source: Laws 2012, LB1160, § 3.

43-4404 Child welfare information system; department; duties; objectives; capacity.

(1) The department shall develop and implement a web-based, statewide automated child welfare information system to integrate child welfare information into one system. Objectives for the web-based, statewide automated child welfare information system shall include: (a) Improving efficiency and effectiveness by reducing paperwork and redundant data entry, allowing case managers to spend more time working with families and children; (b) improving access to information and tools that support consistent policy and practice standards across the state; (c) facilitating timely and quality case management decisions and actions by providing alerts and accurate information, including program information and prior child welfare case histories within the department or a division thereof or from other agencies; (d) providing consistent and accurate data management to improve reporting capabilities, accountability, workload distribution, and child welfare case review requirements; (e) establishing integrated payment processes and procedures for tracking services available and provided to children and accurately paying for those services; (f) improving the capacity for case managers to complete major functional areas of their work, including intake, investigations, placements, foster care eligibility determinations, reunifications, adoptions, financial management, resource management, and reporting; (g) utilizing business intelligence software to track progress through dashboards; (h) access to real-time data to identify specific child welfare cases and take immediate corrective and supportive actions; (i) helping case managers to expediently identify foster homes and community resources available to meet each child's needs; and (j) providing opportunity for greater accuracy, transparency, and oversight of the child welfare system through improved reporting and tracking capabilities.

(2) The capacity of the web-based, statewide automated child welfare information system shall include: (a) Integration across related social services programs through automated interfaces, including, but not limited to, the courts, medicaid eligibility, financial processes, and child support; (b) ease in implementing future system modifications as user requirements or policies change; (c) compatibility with multiple vendor platforms; (d) system architecture that provides multiple options to build additional capacity to manage increased user transactions as system volume requirements increase over time; (e) protection of the system at every tier in case of hardware, software, power, or other system component failure; (f) vendor portals to support direct entry of child welfare case information, as appropriate, by private providers' staff serving children, to increase collaboration between private providers and the department; (g) key automated process analysis to allow supervisors and management to identify child welfare cases not meeting specified goals, identify issues, and report details and outcome measures to cellular telephones or other mobile communication devices used by management and administration; (h) web-based access and availability twenty-four hours per day, seven days per week; (i) automated application of policy and procedures, to make application of policy less complex and easier to follow; (j) automated prompts and alerts

when actions are due, to enable case managers and supervisors to manage child welfare cases more efficiently; and (k) compliance with federal regulations related to statewide automated child welfare information systems at 45 C.F.R. 1355.50 through 1355.57, implementing section 474(a)(3)(C) and (D) of Title IV-E of the federal Social Security Act, 42 U.S.C. 674(a)(3)(C) and (D), as such regulations and section existed on January 1, 2012.

Source: Laws 2012, LB1160, § 4.

43-4405 Statewide automated child welfare information system; report; contents.

On or before December 1, 2012, the department, with assistance from other agencies as necessary, including the data coordinator for the State Foster Care Review Board or a successor entity to the powers and duties of the board, shall report in writing to the Legislature on a plan for the statewide automated child welfare information system described in section 43-4404. The report shall include a review of the design, development, implementation, and cost of the system. The report shall describe the requirements of the system and all available options and compare costs of the options. The report shall include, but not be limited to, a review of the options for (1) system functionality, (2) the potential of the system's use of shared services in areas including, but not limited to, intake, rules, financial information, and reporting, (3) integration, (4) maintenance costs, (5) application architecture to enable flexibility and scalability, (6) deployment costs, (7) licensing fees, (8) training requirements, and (9) operational costs and support needs. The report shall compare the costs and benefits of a custom-built system and a commercial off-the-shelf system, the total cost of ownership, including both direct and indirect costs, and the costs of any other options considered. In conjunction with the report, the department shall prepare the advance planning document required to qualify for federal funding for the statewide automated child welfare information system pursuant to 45 C.F.R. 1355.50 through 1355.57, implementing section 474(a)(3)(C) and (D) of Title IV-E of the federal Social Security Act, 42 U.S.C. 674(a)(3)(C) and (D), as such regulations and section existed on January 1, 2012. The advance planning document shall describe the proposed plan for managing the design, development, and operations of a statewide automated child welfare information system that meets such federal requirements and the state's needs in an efficient, comprehensive, and cost-effective manner.

Source: Laws 2012, LB1160, § 5.

43-4406 Child welfare services; report; contents.

On or before September 15, 2012, and each September 15 thereafter, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by any lead agency or the pilot project and children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area and by lead agency or the pilot project, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30th immediately preceding the date of the report, categorized by service area and by lead agency or the pilot project;

(3) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(4) The following information as obtained for each service area and lead agency or the pilot project:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months, and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(5) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, any lead agency or the pilot project through letters of agreement, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(6) From any lead agency or the pilot project, the percentage of its accounts payable to subcontracted child welfare service providers that are thirty days overdue, sixty days overdue, and ninety days overdue; and

(7) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date.

Source: Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13.

43-4407 Service area administrator; lead agency; pilot project; annual survey; duties; reports.

(1) Each service area administrator and any lead agency or the pilot project shall annually survey children, parents, foster parents, judges, guardians ad litem, attorneys representing parents, and service providers involved with the child welfare system to monitor satisfaction with (a) adequacy of communication by the case manager, (b) response by the department, any lead agency, or the pilot project to requests and problems, (c) transportation issues, (d) medical and psychological services for children and parents, (e) visitation schedules, (f) payments, (g) support services to foster parents, (h) adequacy of information about foster children provided to foster parents, and (i) the case manager's

fulfillment of his or her responsibilities. A summary of the survey shall be reported electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and each September 15 thereafter.

(2) Each service area administrator and any lead agency or the pilot project shall provide monthly reports to the child advocacy center that corresponds with the geographic location of the child regarding the services provided through the department or a lead agency or the pilot project when the child is identified as a voluntary or non-court-involved child welfare case. The monthly report shall include the plan implemented by the department, the lead agency, or the pilot project for the child and family and the status of compliance by the family with the plan. The child advocacy center shall report electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and every September 15 thereafter, or more frequently if requested by the committee.

Source: Laws 2012, LB1160, § 7; Laws 2013, LB222, § 14.

43-4408 Department; reports; contents.

On or before September 15, 2012, and on or before each September 15 thereafter, the department shall provide electronically a report to the Health and Human Services Committee of the Legislature on the department's monitoring of any lead agencies or the pilot project, including the actions taken for contract management, financial management, revenue management, quality assurance and oversight, children's legal services, performance management, and communications. The report shall also include review of the functional capacities of each lead agency or the pilot project for (1) direct case management, (2) utilization of social work theory and evidence-based practices to include processes for insuring fidelity with evidence-based practices, (3) supervision, (4) quality assurance, (5) training, (6) subcontract management, (7) network development and management, (8) financial management, (9) financial controls, (10) utilization management, (11) community outreach, (12) coordination and planning, (13) community and stakeholder engagement, and (14) responsiveness to requests from policymakers and the Legislature. On or before December 31, 2012, the department shall provide an additional report to the committee updating the information on the pilot project contained in the report of September 15, 2012.

Source: Laws 2012, LB1160, § 8; Laws 2013, LB222, § 15.

43-4409 Evaluation of child welfare system; nationally recognized evaluator; duties; qualification; evaluation; contents; report.

(1) The department shall engage a nationally recognized evaluator to provide an evaluation of the child welfare system.

(2)(a) The evaluator shall:

(i) Be a national entity that can demonstrate direct involvement with public and tribal child welfare agencies, partnerships with national advocacy organizations, think tanks, or technical assistance providers, collaboration with community agencies, and independent research; and

(ii) Be independent of the department and any lead agency or the pilot project, shall not have been involved in a contractual relationship with the department, any lead agency, or the pilot project within the preceding three

years, and shall not have served as a consultant to the department, any lead agency, or the pilot project within the preceding three years.

(b) The department shall give consideration to evaluator candidates who have experience in: (i) Outcome measurement, including, but not limited to: Measuring change for organizations, systems, and communities, with an emphasis on organizational assessment, child welfare system evaluation, and complex environmental factors; assessing the quality of child welfare programs and services across the continuum of care, with differential consideration of in-home and foster care populations and advanced research and evaluation methodologies, including qualitative and mixed-method approaches; (ii) use of data, including, but not limited to: Using existing administrative data sets, with an emphasis on longitudinal data analysis; integrating data across multiple systems and interoperability; developing and using data exchange standards; and using continuous quality improvement methods to assist with child welfare policy decisionmaking; (iii) intervention research and evaluation, including, but not limited to: Designing, replicating, and adapting interventions, including the identification of counterfactuals; and evaluating programmatic and policy interventions for efficacy, effectiveness, and cost; and (iv) dissemination and implementation research, including, but not limited to: Measuring fidelity; describing and evaluating the effectiveness of implementation processes; effectively disseminating relevant, accessible, and useful findings and results; and measuring the acceptability, adoption, use, and sustainability of evidence-based and evidence-informed practices and programs.

(3) The evaluation shall include the following key areas:

(a) The degree to which privatization of child welfare services in the eastern service area has been successful in improving outcomes for children and parents, including, but not limited to, whether the outcomes are consistent with the objectives of the Families Matter program or the pilot project and whether the cost is reasonable, given the outcomes and cost of privatization;

(b) A review of the readiness and capacity of any lead agency or the pilot project and the department to perform essential child welfare service delivery and administrative management functions according to nationally recognized standards for network management entities, with special focus on case management. The readiness review shall include, but not be limited to, strengths, areas where functional improvement is needed, areas with current duplication and overlap in effort, and areas where coordination needs improvement; and

(c) A complete review of the preceding three years of placements of children in residential treatment settings, by service area and by any lead agency or the pilot project. The review shall include all placements made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education, or local education agencies; any lead agency or the pilot project through letters of agreement; and the medical assistance program. The review shall include, but not be limited to: (i) Child variables; (ii) reasons for placement; (iii) the percentage of children denied medicaid-reimbursed services and denied the level of placement originally requested; (iv) with respect to each child in residential treatment setting: (A) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement; (B) funds expended and length of placements; (C) number and level of placements; (D) facility

variables; (E) identification of specific services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and (F) percentage of children denied reauthorization requests or subsequent review of initial authorization; (v) identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements; and (vi) recommendations for improved utilization, gatekeeping, and community-level placement prevention initiatives and an analysis of child welfare services that would be more effective and cost efficient in keeping children safe at home.

(4) The evaluation required pursuant to this section shall be completed and a report issued on or before December 1, 2012, to the Health and Human Services Committee of the Legislature and the Governor.

Source: Laws 2012, LB1160, § 9.

43-4410 Contract to provide child welfare services; evidence of financial stability and liquidity required; prohibited acts.

(1) Any entity seeking to enter into a contract with the Department of Health and Human Services to provide child welfare services shall provide evidence of financial stability and liquidity prior to executing such contract.

(2) An entity contracting with the department to provide child welfare services shall not require any subcontractor or employee of such contractor or subcontractor to sign an agreement not to compete with such contractor as a condition of subcontracting or employment.

Source: Laws 2013, LB269, § 10.

ARTICLE 45

YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

Section

- | | |
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43-4501 Act, how cited.

Sections 43-4501 to 43-4514 shall be known and may be cited as the Young Adult Bridge to Independence Act.

Source: Laws 2013, LB216, § 1; Laws 2014, LB853, § 30.
Effective date July 18, 2014.

43-4502 Purpose of act.

The purpose of the Young Adult Bridge to Independence Act is to support former state wards in transitioning to adulthood, becoming self-sufficient, and creating permanent relationships. The bridge to independence program shall at all times recognize and respect the autonomy of the young adult. Nothing in the Young Adult Bridge to Independence Act shall be construed to abrogate any other rights that a person who has attained nineteen years of age may have as an adult under state law.

Source: Laws 2013, LB216, § 2; Laws 2014, LB853, § 31.
Effective date July 18, 2014.

43-4503 Terms, defined.

For purposes of the Young Adult Bridge to Independence Act:

(1) Bridge to independence program means the extended services and support available to a young adult under the Young Adult Bridge to Independence Act other than the state-extended guardianship assistance program described in subdivision (3)(b) of section 43-4514;

(2) Child means an individual who has not attained twenty-one years of age;

(3) Department means the Department of Health and Human Services;

(4) Supervised independent living setting means an independent supervised setting, consistent with 42 U.S.C. 672(c). Supervised independent living settings shall include, but not be limited to, single or shared apartments, houses, host homes, college dormitories, or other postsecondary educational or vocational housing;

(5) Voluntary services and support agreement means a voluntary placement agreement as defined in 42 U.S.C. 672(f) between the department and a young adult as his or her own guardian; and

(6) Young adult means an individual who has attained nineteen years of age but who has not attained twenty-one years of age.

Source: Laws 2013, LB216, § 3; Laws 2014, LB853, § 32.
Effective date July 18, 2014.

43-4504 Bridge to independence program; availability.

The bridge to independence program is available, on a voluntary basis, to a young adult:

(1) Who has attained at least nineteen years of age;

(2) Who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and, upon attaining nineteen years of age, was in an out-of-home placement or had been discharged to independent living; and

(3) Who is:

- (a) Completing secondary education or an educational program leading to an equivalent credential;
- (b) Enrolled in an institution which provides postsecondary or vocational education;
- (c) Employed for at least eighty hours per month;
- (d) Participating in a program or activity designed to promote employment or remove barriers to employment; or
- (e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult.

Source: Laws 2013, LB216, § 4; Laws 2014, LB853, § 33.

Effective date July 18, 2014.

43-4505 Extended services and support; services enumerated.

Extended services and support provided under the bridge to independence program include, but are not limited to:

- (1) Medical care under the medical assistance program;
- (2) Housing, placement, and support in the form of continued foster care maintenance payments which shall remain at least at the rate set immediately prior to the young adult's exit from foster care. As decided by and with the young adult, young adults may reside in a foster family home, a supervised independent living setting, an institution, or a foster care facility. Placement in an institution or a foster care facility should occur only if necessary due to a young adult's developmental level or medical condition. A young adult who is residing in a foster care facility upon leaving foster care may choose to temporarily stay until he or she is able to transition to a more age-appropriate setting. For young adults residing in a supervised independent living setting:
 - (a) The department may send all or part of the foster care maintenance payments directly to the young adult. This should be decided on a case-by-case basis by and with the young adult in a manner that respects the independence of the young adult; and
 - (b) Rules and restrictions regarding housing options should be respectful of the young adult's autonomy and developmental maturity. Specifically, safety assessments of the living arrangements shall be age-appropriate and consistent with federal guidance on a supervised setting in which the individual lives independently. A clean background check shall not be required for an individual residing in the same residence as the young adult; and
- (3) Case management services that are young-adult driven. Case management shall be a continuation of the independent living transition proposal in section 43-1311.03, including a written description of additional resources that will help the young adult in creating permanent relationships and preparing for the transition to adulthood and independent living. Case management shall include the development of a case plan, developed jointly by the department and the young adult, that includes a description of the identified housing situation or living arrangement, the resources to assist the young adult in the transition from the bridge to independence program to adulthood, and the needs listed in subsection (1) of section 43-1311.03. The case plan shall incorporate the independent living transition proposal in section 43-1311.03. Case management shall also include, but not be limited to, documentation that assistance has been

offered and provided that would help the young adult meet his or her individual goals, if such assistance is appropriate and if the young adult is eligible and consents to receive such assistance. This shall include, but not be limited to, assisting the young adult to:

- (a) Obtain employment or other financial support;
- (b) Obtain a government-issued identification card;
- (c) Open and maintain a bank account;
- (d) Obtain appropriate community resources, including health, mental health, developmental disability, and other disability services and support;
- (e) When appropriate, satisfy any juvenile justice system requirements and assist with sealing the young adult's juvenile court record if the young adult is eligible under section 43-2,108.01;
- (f) Complete secondary education;
- (g) Apply for admission and aid for postsecondary education or vocational courses;
- (h) Obtain the necessary state court findings and then apply for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J) or apply for other immigration relief that the young adult may be eligible for;
- (i) Create a health care power of attorney, health care proxy, or other similar document recognized under state law, at the young adult's option, pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148;
- (j) Obtain a copy of health and education records of the young adult;
- (k) Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including, but not limited to, aid to dependent children, supplemental security income, social security disability insurance, social security survivors benefits, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Supplemental Nutrition Assistance Program, and low-income home energy assistance programs;
- (l) Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;
- (m) Access information about maternal and paternal relatives, including any siblings;
- (n) Access young adult empowerment opportunities, such as Project Everlast and peer support groups; and
- (o) Access pregnancy and parenting resources and services.

Source: Laws 2013, LB216, § 5; Laws 2014, LB853, § 34.
Effective date July 18, 2014.

43-4506 Participation in bridge to independence program; voluntary services and support agreement; contents; services provided; independence coordinator; department; duties.

(1) If a young adult chooses to participate in the bridge to independence program and is eligible under section 43-4504, the young adult and the department shall sign, and the young adult shall be provided a copy of, a voluntary services and support agreement that includes, at a minimum, information regarding all of the following:

(a) The requirement that the young adult continue to be eligible under section 43-4504 for the duration of the voluntary services and support agreement and any other expectations of the young adult;

(b) The services and support the young adult shall receive through the bridge to independence program;

(c) The voluntary nature of the young adult's participation and the young adult's right to terminate the voluntary services and support agreement at any time; and

(d) Conditions that may result in the termination of the voluntary services and support agreement and the young adult's early discharge from the bridge to independence program as described in section 43-4507.

(2) As soon as the young adult and the department sign the voluntary services and support agreement and the department determines that the young adult is eligible for the bridge to independence program under section 43-4504, but not longer than forty-five days after signing the agreement, the department shall provide services and support to the young adult in accordance with the voluntary services and support agreement.

(3) A young adult participating in the bridge to independence program shall be assigned an independence coordinator to provide case management services for the young adult. Independence coordinators and their supervisors shall be specialized in primarily providing services for young adults in the bridge to independence program or shall, at minimum, have specialized training in providing transition services and support to young adults.

(4) The department shall provide continued efforts at achieving permanency and creating permanent connections for a young adult participating in the bridge to independence program.

(5) The department shall fulfill all case plan obligations consistent with 42 U.S.C. 675(1).

Source: Laws 2013, LB216, § 6; Laws 2014, LB853, § 35.
Effective date July 18, 2014.

43-4507 Termination of voluntary services and support agreement; notice; appeal; procedure; department; duties.

(1) A young adult may choose to terminate the voluntary services and support agreement and stop receiving services and support under the bridge to independence program at any time. If a young adult chooses to terminate the voluntary services and support agreement, the department shall provide the young adult with a clear and developmentally appropriate written notice informing the young adult of the potential negative effects of terminating the voluntary services and support agreement early, the option to reenter the bridge to independence program at any time before attaining twenty-one years of age, the procedures for reentering the bridge to independence program, and information about and contact information for community resources that may benefit the young adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677.

(2) If the department determines that the young adult is no longer eligible for the bridge to independence program under section 43-4504, the department may terminate the voluntary services and support agreement and stop providing services and support to the young adult. Academic breaks in postsecondary

education attendance, such as semester and seasonal breaks, and other transitions between eligibility requirements under section 43-4504, including education and employment transitions of no longer than thirty days, shall not be a basis for termination. Even if a young adult's voluntary services and support agreement has been previously terminated by either the department or the young adult, the young adult may come back into the bridge to independence program by entering into another voluntary services and support agreement at any time, so long as he or she is eligible under section 43-4504. At least thirty days prior to the termination of the voluntary services and support agreement, the department shall provide a clear and developmentally appropriate written notice to the young adult informing the young adult of the termination of the voluntary services and support agreement and a clear and developmentally appropriate explanation of the basis for the termination. The written termination notice shall also provide information about the process for appealing the termination, information about the option to enter into another voluntary services and support agreement once the young adult reestablishes eligibility under section 43-4504, and information about and contact information for community resources that may benefit the young adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677. In addition, the independence coordinator shall make efforts to meet with the young adult in person to explain the information in the written termination notice and to assist the young adult in reestablishing eligibility if the young adult wishes to continue participating in the program. The young adult may appeal the termination of the voluntary services and support agreement and any other actions or inactions by the department administratively, as allowed under the Administrative Procedure Act.

(3) If the young adult remains in the bridge to independence program until attaining twenty-one years of age, the department shall provide the young adult with a clear and developmentally appropriate written notice informing the young adult of the termination of the voluntary services and support agreement and information about and contact information for community resources that may benefit the young adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677.

Source: Laws 2013, LB216, § 7; Laws 2014, LB853, § 36.
Effective date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

43-4508 Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support.

(1) Within forty-five days after the voluntary services and support agreement is signed, the department shall file a petition with the juvenile court describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to participate in the bridge to independence program. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) To ensure continuity of care and eligibility, the voluntary services and support agreement should be signed prior to and filed with the court at the last court hearing before the young adult is discharged from foster care for all young adults who choose to participate in the bridge to independence program at that time.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506 and to conduct permanency reviews as described in this section. Upon the filing of a petition under subsection (1) of this section, the court shall open a bridge to independence program file for the young adult for the purpose of determining whether continuing in such program is in the young adult's best interests and for the purpose of conducting permanency reviews.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and may conduct such hearing at additional times, but not more times than is reasonably practicable, at the request of the young adult, the department, or any other party to the proceeding. The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings. The juvenile court shall conduct the permanency reviews in an expedited manner and shall issue findings and orders, if any, as speedily as possible.

(6)(a) The primary purpose of the permanency review is to ensure that the bridge to independence program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency. This shall include that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted on the record and in an informal manner and, whenever possible, outside of the courtroom.

(b) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(c) The court shall determine whether the bridge to independence program is providing the appropriate services and support as provided in the voluntary services and support agreement to carry out the case plan. The court has the authority to determine whether the young adult is receiving the services and support he or she is entitled to receive under the Young Adult Bridge to Independence Act and the department's policies or state or federal law to help the young adult move toward permanency and self-sufficiency. If the court

believes that the young adult requires additional services and support to achieve the goals documented in the case plan or under the Young Adult Bridge to Independence Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

Source: Laws 2013, LB216, § 8; Laws 2014, LB853, § 37.
Effective date July 18, 2014.

43-4508.01 Permanency review or case review; independence coordinator; duties.

At least thirty days prior to each permanency review or case review, the independence coordinator shall meet with the young adult to notify the young adult of the date, time, and location of the review, to explain the purpose of the review, and to identify additional persons the young adult would like to attend the review and assist in making arrangements for their attendance.

Source: Laws 2014, LB853, § 38.
Effective date July 18, 2014.

43-4509 Department; periodic case reviews; written notice; contents.

(1) The department and at least one person who is not responsible for case management, in collaboration with the young adult and additional persons identified by the young adult, shall conduct periodic case reviews consistent with 42 U.S.C. 675(5)(B) not less than once every one hundred eighty days to evaluate progress made toward meeting the goals set forth in the case plan. The department is not required to have legal counsel present at such reviews. The department shall utilize a team approach in conducting such reviews and shall seek to facilitate the participation of the young adult. Reviews shall be conducted in an informal manner and, whenever possible, scheduled at times that allow for the attendance and participation of the young adult.

(2) At the end of each case review, the reviewer conducting the periodic case review shall notify the young adult of his or her right to request a client-directed attorney and an additional permanency review and shall provide the young adult with a clear and developmentally appropriate written notice regarding the young adult's right to request a client-directed attorney, the benefits and role of such attorney, the specific steps to take to request that an attorney be appointed, the young adult's right to request an additional permanency review hearing, the potential benefits and purpose of such a hearing, and the specific steps to take to request an additional permanency review hearing.

Source: Laws 2013, LB216, § 9; Laws 2014, LB853, § 39.
Effective date July 18, 2014.

43-4510 Court-appointed attorney; continuation of guardian ad litem; independence coordinator; duties; notice; court appointed special advocate volunteer.

(1) If desired by the young adult, the young adult shall be provided a court-appointed attorney who has received training appropriate to the role. The attorney's representation of the young adult shall be client-directed. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the bridge to independence program is providing the young adult

with the services and support required under the Young Adult Bridge to Independence Act. For young adults who were appointed a guardian ad litem before the young adult attained nineteen years of age, the guardian ad litem's appointment may be continued, with consent from the young adult, but under a client-directed model of representation. Before entering into a voluntary services and support agreement and at least sixty days prior to each permanency and case review, the independence coordinator shall notify the young adult of his or her right to request a client-directed attorney if the young adult would like an attorney to be appointed and shall provide the young adult with a clear and developmentally appropriate written notice regarding the young adult's right to request a client-directed attorney, the benefits and role of such attorney, and the specific steps to take to request that an attorney be appointed if the young adult would like an attorney appointed.

(2) The court has discretion to appoint a court appointed special advocate volunteer or continue the appointment of a previously appointed court appointed special advocate volunteer with the consent of the young adult.

Source: Laws 2013, LB216, § 10; Laws 2014, LB853, § 40.
Effective date July 18, 2014.

43-4511 Extended guardianship assistance; eligibility; use.

(1) The department shall provide extended guardianship assistance for a young adult who is at least nineteen years of age but less than twenty-one years of age if the young adult began receiving kinship guardianship assistance pursuant to 42 U.S.C. 673 at sixteen years of age or older or the young adult received state-funded guardianship assistance in a licensed relative placement at sixteen years of age or older and the young adult meets at least one of the following conditions for eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

Source: Laws 2013, LB216, § 11; Laws 2014, LB853, § 41.
Effective date July 18, 2014.

43-4512 Extended adoption assistance; eligibility; use.

(1) The department shall provide extended adoption assistance for a young adult who is at least nineteen years of age but less than twenty-one years of age

if the young adult began receiving adoption assistance at sixteen years of age or older and meets at least one of the following conditions of eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The adoptive parent or parents shall ensure that any adoption assistance funds provided by the department and received by the adoptive parent shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

Source: Laws 2013, LB216, § 12; Laws 2014, LB853, § 42.
Effective date July 18, 2014.

43-4513 Bridge to Independence Advisory Committee; members; terms; duties; meetings; report; contents.

(1) On or before July 1, 2013, the Nebraska Children's Commission shall appoint a Bridge to Independence Advisory Committee to make recommendations to the department and the Nebraska Children's Commission for a state-wide implementation plan meeting the bridge to independence program requirements of the Young Adult Bridge to Independence Act. The committee shall provide a written report regarding the initial implementation of the program to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by October 1, 2013. The report shall also specifically address recommendations for maximizing and making efficient use of funding for a state-extended guardianship assistance program described in section 43-4514. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically. The Bridge to Independence Advisory Committee shall meet on a biannual basis thereafter to advise the department and the Nebraska Children's Commission regarding ongoing implementation of the bridge to independence program and shall provide a written report regarding ongoing implementation, including bridge to independence program participation and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by December 15th of each year. By December 15, 2015, the committee shall develop specific recommendations for expanding to or improving outcomes for similar groups of at-risk young adults and for the adaptation or continuation of assistance under the state-extended guardianship assistance program described in section 43-4514. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Bridge to Independence Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy organization, (d) one or more representatives from a child welfare service agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB216, § 13; Laws 2014, LB853, § 43.
Effective date July 18, 2014.

43-4514 Department; submit state plan amendment to seek federal funding; approval; effect; denial; effect; rules and regulations; references to United States Code; how construed.

(1) The department shall submit a state plan amendment by October 15, 2013, to seek federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673 for the bridge to independence program pursuant to the Young Adult Bridge to Independence Act.

(2) The bridge to independence program or the state-extended guardianship assistance program under either subsection (3) or (4) of this section shall not begin prior to January 1, 2014.

(3) If the state plan amendment is approved:

(a) The department shall implement the bridge to independence program in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673. If the department does not contract with a private agency to implement the bridge to independence program, the bridge to independence program shall take effect within sixty days after the department receives the notice of approval of the state plan amendment. If the department contracts with a private agency to implement the bridge to independence program, the bridge to independence program shall take effect within ninety days after the department receives the notice of approval of the state plan amendment; and

(b) The department shall implement a state-extended guardianship assistance program. The state-extended guardianship assistance program shall not be construed to create an entitlement. Under the state-extended guardianship assistance program, a young adult (i) for whom the state has entered into a guardianship assistance agreement at sixteen years of age or older that is not with a licensed relative and (ii) who meets at least one of the conditions of eligibility under subdivisions (1)(a) through (e) of section 43-4511, the department shall continue making guardianship assistance payments on behalf of such young adult until he or she attains twenty-one years of age to the extent possible within funds appropriated for the state-extended guardianship assistance program. It is the intent of the Legislature to appropriate four hundred

thousand dollars for fiscal years 2013-14 and 2014-15 for the state-extended guardianship assistance program.

(4) If the state plan amendment is denied, the department shall implement the bridge to independence program as a state-only pilot program within sixty days after the department receives the notice of denial. If implemented as a state-only pilot program, it is the intent of the Legislature to appropriate two million dollars for fiscal years 2013-14 and 2014-15 for such state-only pilot program. The department shall administer the state-only pilot program to serve as many eligible young adults as possible within the funds appropriated. If a state-only pilot program is established, the Bridge to Independence Advisory Committee shall make recommendations to the department and the Nebraska Children's Commission regarding eligibility criteria and private or alternative funding options within thirty days after the department receives the notice of denial.

(5) Prior to January 1, 2014, the department shall adopt and promulgate rules and regulations to carry out the Young Adult Bridge to Independence Act.

(6) All references to the United States Code in the Young Adult Bridge to Independence Act refer to sections of the code as such sections existed on January 1, 2013.

Source: Laws 2013, LB216, § 14; Laws 2014, LB853, § 44.
Effective date July 18, 2014.

INSURANCE

CHAPTER 44 INSURANCE

Article.

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ARTICLE 1

POWERS OF DEPARTMENT OF INSURANCE

Section

- 44-102.01. Insurance; service contract excluded.
- 44-113. Department; report; contents.
- 44-114. Department; fees for services.
- 44-154. Director; information; disclosure; confidentiality; privilege.
- 44-165. Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

44-102.01 Insurance; service contract excluded.

For purposes of Chapter 44, insurance does not include a service contract. For purposes of this section, service contract means (1) a motor vehicle service contract as defined in section 44-3521 or (2) a contract or agreement, whether designated as a service contract, maintenance agreement, warranty, extended warranty, or similar term, whereby a person undertakes to furnish, arrange for, or, in limited circumstances, reimburse for service, repair, or replacement of any or all of the components, parts, or systems of any covered residential dwelling or consumer product when such service, repair, or replacement is necessitated by wear and tear, failure, malfunction, inoperability, inherent defect, or failure of an inspection to detect the likelihood of failure.

Source: Laws 1990, LB 1136, § 91; Laws 2011, LB535, § 10.

44-113 Department; report; contents.

The Department of Insurance shall transmit to the Governor, ten days prior to the opening of each session of the Legislature, a report of its official transactions, containing in a condensed form the statements made to the department by every insurance company authorized to do business in this state pursuant to Chapter 44, as audited and corrected by it, arranged in tabular form or in abstracts, in classes according to the kind of insurance, which report shall also contain (1) a statement of all insurance companies authorized to do business in this state during the year ending December 31 next preceding, with their names, locations, amounts of capital, dates of incorporation, and of the commencement of business and kinds of insurance in which they are engaged respectively; and (2) a statement of the insurance companies whose business has been closed since making the last report, and the reasons for closing such businesses, with the amount of their assets and liabilities, so far as the amount of their assets and liabilities are known or can be ascertained by the department. The report shall also be transmitted electronically to the Clerk of the Legislature. Each member of the Legislature shall receive a copy of such report by making a request for it to the director. The department may transmit the report by electronic format through the portal established under section 84-1204 after notification of such type of delivery is given to the recipient. The department shall maintain the report in a form capable of accurate duplication on paper.

Source: Laws 1913, c. 154, § 18, p. 405; R.S.1913, § 3154; Laws 1919, c. 190, tit. V, art. III, § 11, p. 583; C.S.1922, § 7755; C.S.1929, § 44-211; R.S.1943, § 44-113; Laws 1969, c. 359, § 2, p. 1268; Laws 1979, LB 322, § 14; Laws 2003, LB 216, § 1; Laws 2012, LB719, § 1; Laws 2012, LB782, § 53.

44-114 Department; fees for services.

In addition to any other fees and charges provided by law, the following shall be due and payable to the Department of Insurance: (1) For filing the documents, papers, statements, and information required by law upon the organization of domestic or the entry of foreign or alien insurers, statistical agents, or advisory organizations, three hundred dollars; (2) for filing each amendment of articles of incorporation, twenty dollars; (3) for filing restated articles of incorporation, twenty dollars; (4) for renewing each certificate of authority of

insurers, statistical agents, or advisory organizations, one hundred dollars, except domestic assessment associations, which shall pay twenty dollars; (5) for issuance of an amended certificate of authority, one hundred dollars; (6) for filing a certified copy of articles of merger involving a domestic or foreign insurance corporation holding a certificate of authority to transact insurance business in this state, fifty dollars; (7) for filing an annual statement, two hundred dollars; (8) for each certificate of valuation, deposit, or compliance or other certificate for whomsoever issued, five dollars; (9) for filing any report which may be required by the department from any unincorporated mutual association, no fee shall be due; (10) for copying official records or documents, fifty cents per page; and (11) for a preadmission review of documents required to be filed for the admission of a foreign insurer or for the organization and licensing of a domestic insurer other than an assessment association, a nonrefundable fee of one thousand dollars.

Source: Laws 1913, c. 154, § 19, p. 406; R.S.1913, § 3155; Laws 1919, c. 190, tit. V, art. III, § 12, p. 584; C.S.1922, § 7756; C.S.1929, § 44-212; Laws 1935, c. 101, § 1, p. 330; C.S.Supp.,1941, § 44-212; R.S.1943, § 44-114; Laws 1955, c. 168, § 2, p. 478; Laws 1965, c. 250, § 1, p. 708; Laws 1969, c. 359, § 3, p. 1269; Laws 1969, c. 360, § 1, p. 1282; Laws 1977, LB 333, § 1; Laws 1980, LB 481, § 31; Laws 1984, LB 801, § 46; Laws 1989, LB 92, § 10; Laws 1991, LB 233, § 42; Laws 2003, LB 216, § 2; Laws 2012, LB887, § 1.

44-154 Director; information; disclosure; confidentiality; privilege.

(1) Unless otherwise expressly prohibited by Chapter 44, the director may:

(a) Share documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, with other state, federal, foreign, and international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees to maintain the confidential or privileged status of the document, material, or other information;

(b) Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, and the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged any document, material, or other information received pursuant to an information-sharing agreement entered into pursuant to this section with notice or the understanding that the document, material, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing sharing and use of information consistent with this subsection.

(2)(a) All confidential and privileged information obtained by or disclosed to the director by other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors,

the Bank for International Settlements, or the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information shall:

- (i) Be confidential and privileged;
- (ii) Not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09;
- (iii) Not be subject to subpoena; and
- (iv) Not be subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding the provisions of subdivision (2)(a) of this section, the director may use the documents, materials, or other information in any regulatory or legal action brought by the director.

(3) The director, and any other person while acting under the authority of the director who has received information from other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section, may not, and shall not be required to, testify in any private civil action concerning such information.

(4) Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information received from state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section as a result of disclosure to the director or as a result of information sharing authorized by this section.

Source: Laws 2001, LB 52, § 26; Laws 2012, LB887, § 2.

44-165 Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

(1)(a) A financial conglomerate may submit to the jurisdiction of the Director of Insurance for supervision on a consolidated basis under this section. Supervision under this section shall be in addition to all statutory and regulatory requirements imposed on domestic insurers and shall be for the purpose of determining how the operations of the financial conglomerate impact insurance operations.

(b) For purposes of this section:

- (i) Control has the same meaning as in section 44-2121; and
- (ii) Financial conglomerate means either an insurance company domiciled in Nebraska or a person established under the laws of the United States, any state, or the District of Columbia which directly or indirectly controls an insurance company domiciled in Nebraska. Financial conglomerate includes the person

applying for supervision under this section and all entities, whether insurance companies or otherwise, to the extent the entities are controlled by such person.

(2) The director may approve any application for supervision under this section that meets the requirements of this section and the rules and regulations adopted and promulgated under this section.

(3)(a) The director may adopt and promulgate rules and regulations for supervision of a financial conglomerate, including all persons controlled by a financial conglomerate, that will permit the director to assess at the level of the financial conglomerate the financial situation of the financial conglomerate, including solvency, risk concentration, and intra-group transactions.

(b) Such rules and regulations shall require the financial conglomerate to:

(i) Have in place sufficient capital adequacy policies at the level of the financial conglomerate;

(ii) Report to the director at least annually any significant risk concentration at the level of the financial conglomerate;

(iii) Report to the director at least annually all significant intra-group transactions of regulated entities within a financial conglomerate. Such reporting shall be in addition to all reports required under any other provision of Chapter 44; and

(iv) Have in place at the level of the financial conglomerate adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(c) In adopting and promulgating the rules and regulations, the director:

(i) Shall consider the rules and regulations that may be adopted by a member state of the European Union, the European Union, or any other country for the supervision of financial conglomerates;

(ii) Shall require the filing of such information as the director may determine;

(iii) Shall include standards and processes for effective qualitative group assessment, quantitative group assessment including capital adequacy, affiliate transaction, and risk concentration assessment, risks and internal capital assessments, disclosure requirements, and investigation and enforcement powers;

(iv) Shall state that supervision of financial conglomerates concerns how the operations of the financial conglomerate impact the insurance operations;

(v) Shall adopt an application fee in an amount not to exceed the amount necessary to recover the cost of review and analysis of the application; and

(vi) May verify information received under this section.

(4)(a) If it appears to the director that a financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, willfully violates this section or the rules and regulations adopted and promulgated under this section, the director may order the financial conglomerate to cease and desist immediately any such activity. After notice and hearing, the director may order the financial conglomerate to void any contracts between the financial conglomerate and any of its affiliates or among affiliates of the financial conglomerate and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(b) If it appears to the director that any financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, has committed or is about to commit a violation of

this section or the rules and regulations adopted and promulgated under this section, the director may apply to the district court of Lancaster County for an order enjoining such financial conglomerate, director, officer, employee, or agent from violating or continuing to violate this section or the rules and regulations adopted and promulgated under this section and for such other equitable relief as the nature of the case and the interest of the financial conglomerate's policyholders, creditors, or the public may require.

(c)(i) Any financial conglomerate that fails, without just cause, to provide information which may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the financial conglomerate demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the financial conglomerate.

(ii) Any financial conglomerate that fails to notify the director of any action for which such notification may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of not more than two thousand five hundred dollars per violation.

(iii) Any violation of this section or the rules and regulations adopted and promulgated under this section shall be an unfair trade practice under the Unfair Insurance Trade Practices Act in addition to any other remedies and penalties available under the laws of this state.

(d) Any director or officer of a financial conglomerate that submits to the jurisdiction of the director under this section who knowingly violates or assents to any officer or agent of the financial conglomerate to violate this section or the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(e) After notice and hearing, the director may terminate the supervision of any financial conglomerate under this section if it ceases to qualify as a financial conglomerate under this section or the rules and regulations adopted and promulgated under this section.

(f) If it appears to the director that any person has committed a violation of this section or the rules and regulations adopted and promulgated under this section which so impairs the financial condition of a domestic insurer that submits to the jurisdiction of the director under this section as to threaten insolvency or make the further transaction of business by such financial conglomerate hazardous to its policyholders or the public, the director may proceed as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to take possession of the property of such domestic insurer and to conduct the business thereof.

(g) If it appears to the director that any person that submits to the jurisdiction of the director under this section has committed a violation of this section or the rules and regulations adopted and promulgated under this section which

makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

(h)(i) Any financial conglomerate that submits to the jurisdiction of the director under this section that willfully violates this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(ii) Any director, officer, employee, or agent of a financial conglomerate that submits to the jurisdiction of the director under this section who willfully violates this section or the rules and regulations adopted and promulgated under this section or who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(iii) Any person aggrieved by any act, determination, order, or other action of the director pursuant to this section or the rules and regulations adopted and promulgated under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(iv) Any person aggrieved by any failure of the director to act or make a determination required by this section or the rules and regulations adopted and promulgated under this section may petition the district court of Lancaster County for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

(i) The powers, remedies, procedures, and penalties governing financial conglomerates under this section shall be in addition to any other provisions provided by law.

(5)(a) The director may contract with such qualified persons as the director deems necessary to allow the director to perform any duties and responsibilities under this section.

(b) The reasonable expenses of supervision of a financial conglomerate under this section shall be fixed and determined by the director who shall collect the same from the supervised financial conglomerate. The financial conglomerate shall reimburse the amount upon presentation of a statement by the director. All money collected by the director for supervision of financial conglomerates pursuant to this section shall be remitted in accordance with section 44-116.

(c) All information, documents, and copies thereof obtained by or disclosed to the director pursuant to this section shall be held by the director in accordance with sections 44-154 and 44-2138.

Source: Laws 2008, LB855, § 50; Laws 2014, LB700, § 14.

Operative date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section

- 44-205.01. Articles of incorporation; contents.
 44-206. Insurance companies; formation; notice; publication.
 44-208.02. Insurance companies; organization; subscriptions to stock; permit.
 44-211. Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.
 44-224.01. Reinsurance, merger, consolidation; terms, defined.
 44-224.04. Domestic stock company merger; contract; approval.

44-205.01 Articles of incorporation; contents.

(1) The articles of incorporation filed pursuant to section 44-205 shall state (a) the corporate name, which shall not so nearly resemble the name of an existing corporation as, in the opinion of the Director of Insurance, will mislead the public or cause confusion, (b) the place in Nebraska where the registered office and principal office will be located, (c) the purposes, which shall be restricted to the kind or kinds of insurance to be undertaken, such other kinds of business which it shall be empowered to undertake, and the powers necessary and incidental to carrying out such purposes, and (d) such other particulars as are required by the Nebraska Model Business Corporation Act and Chapter 44.

(2) The articles of incorporation may state such other particulars as are permitted by the Nebraska Model Business Corporation Act and Chapter 44, including provisions relating to the management of the business and regulation of the affairs of the corporation and defining, limiting, and regulating the powers of the corporation, its board of directors, and the shareholders of a stock corporation or the members of a mutual or assessment corporation.

Source: Laws 1957, c. 178, § 1, p. 611; Laws 1972, LB 1336, § 2; Laws 1989, LB 92, § 47; Laws 1995, LB 109, § 215; Laws 2014, LB749, § 280.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-206 Insurance companies; formation; notice; publication.

Within the earlier of thirty days after receiving the certificate of authority to transact business or four months after filing its articles of incorporation, such corporation shall publish a notice in some legal newspaper, which notice shall contain the same information, as far as practicable, as that required under the Nebraska Model Business Corporation Act.

Source: Laws 1913, c. 154, § 81, p. 429; R.S.1913, § 3218; Laws 1919, c. 190, tit. V, art. V, § 4, p. 609; Laws 1921, c. 305, § 1, p. 963; C.S.1922, § 7817; C.S.1929, § 44-404; R.S.1943, § 44-206; Laws 1989, LB 92, § 48; Laws 1995, LB 109, § 216; Laws 2014, LB749, § 281.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-208.02 Insurance companies; organization; subscriptions to stock; permit.

If the Director of Insurance approves the forms of subscriptions for capital stock or the forms of application for membership or for insurance, the corporate surety on the bond required by section 44-208.01, and, in the case of stock insurers, the application to solicit subscriptions for stock, he or she shall deliver to the promoter or incorporators a permit in the name of the corporation authorizing it to complete its organization. Upon receiving such permit, the corporation shall have authority to solicit subscriptions and payments for capital stock if a stock insurer and applications and premiums or advance assessments for insurance if other than a stock insurer and to exercise such powers, subject to the limitations imposed by the Nebraska Model Business Corporation Act and Chapter 44, as may be necessary and proper in completing its organization and qualifying for a license to transact the kind or kinds of insurance proposed in its articles of incorporation. No corporation shall issue policies or enter into contracts of insurance until it receives a certificate of authority permitting it to do so.

Source: Laws 1957, c. 178, § 3, p. 613; Laws 1989, LB 92, § 51; Laws 1995, LB 109, § 217; Laws 2014, LB749, § 282.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-211 Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five persons, and one of them shall be a resident of the State of Nebraska. At least one-fifth of the directors of an insurance company, which is not subject to section 44-2135, shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder, if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws. A director shall discharge his or her duties as a director in accordance with section 21-2,102.

Source: Laws 1913, c. 154, § 82, p. 429; R.S.1913, § 3219; Laws 1919, c. 190, tit. V, art. V, § 5, p. 609; C.S.1922, § 7818; C.S.1929, § 44-405; R.S.1943, § 44-211; Laws 1953, c. 145, § 1, p. 469; Laws 1959, c. 195, § 1, p. 702; Laws 1961, c. 212, § 1, p. 630; Laws 1965, c. 255, § 1, p. 722; Laws 1967, c. 263, § 1, p. 706; Laws 1989, LB 92, § 57; Laws 1991, LB 236, § 35; Laws 1999, LB 259, § 2; Laws 2007, LB191, § 2; Laws 2014, LB749, § 283.
Operative date January 1, 2016.

44-224.01 Reinsurance, merger, consolidation; terms, defined.

For purposes of sections 44-224.01 to 44-224.10, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance or his or her authorized representative;

(2) Policyholders shall mean the members of mutual insurance companies, the members of assessment associations, and the subscribers to reciprocal insurance exchanges;

(3) Merger or contract of merger shall mean a merger or consolidation agreement between stock insurance companies as authorized by the Nebraska Model Business Corporation Act;

(4) Consolidation or contract of consolidation shall mean a merger or consolidation agreement between companies operating on other than the stock plan of insurance; and

(5) Bulk reinsurance or contract of bulk reinsurance shall mean an agreement whereby one company cedes by an assumption reinsurance agreement fifty percent or more of its risks and business to another company.

Source: Laws 1957, c. 180, § 1, p. 620; Laws 1969, c. 359, § 10, p. 1271; Laws 1989, LB 92, § 72; Laws 1995, LB 109, § 218; Laws 2014, LB749, § 284.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-224.04 Domestic stock company merger; contract; approval.

Any domestic stock insurance company may merge with another stock insurer after the contract of merger is approved by the director. The director shall not approve any such contract of merger unless the interests of the policyholders or shareholders of both parties thereto are properly protected. If the director does not approve the contract of merger, he or she shall issue a written order of disapproval setting forth his or her findings. After having obtained the approval of the director, the contract of merger shall be consummated in the manner set forth in the Nebraska Model Business Corporation Act for the merger or consolidation of stock corporations.

Source: Laws 1957, c. 180, § 4, p. 621; Laws 1969, c. 362, § 1, p. 1286; Laws 1976, LB 916, § 1; Laws 1989, LB 92, § 74; Laws 1995, LB 109, § 219; Laws 2014, LB749, § 285.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

44-301. Insurance companies; corporation laws apply; exceptions.

44-309. Pollutant exclusion; exception for bodily injury.

44-310. Individual sickness and accident or medicare supplement policy; death of insured; refund of unearned premium.

44-311. Health care sharing ministry; treatment under insurance laws.

Section

- 44-361.01. Rebates; circumventing; presumptions.
44-3,143. Life insurance policy proceeds; payment of interest; when.
44-3,159. Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

44-301 Insurance companies; corporation laws apply; exceptions.

The Nebraska Model Business Corporation Act, except as otherwise provided in Chapter 44, shall apply to all domestic incorporated insurance companies so far as the act is applicable or pertinent to and not in conflict with other provisions of the law relating to such companies. An assessment association that has accumulated and continues to maintain (1) reserves and (2) surplus or contingency funds at least equal to those required of a mutual insurance company shall, unless otherwise provided by law, be deemed to have all the powers and privileges in transacting its business and managing its affairs as those possessed by a mutual insurance company qualified to transact the same line or lines of insurance as the assessment association.

Source: Laws 1913, c. 154, § 30, p. 412; R.S.1913, § 3166; Laws 1919, c. 190, tit. V, art. IV, § 1, p. 590; C.S.1922, § 7766; C.S.1929, § 44-301; R.S.1943, § 44-301; Laws 1955, c. 172, § 1, p. 488; Laws 1989, LB 92, § 92; Laws 1995, LB 109, § 220; Laws 2014, LB749, § 286.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-309 Pollutant exclusion; exception for bodily injury.

An exclusion in a homeowner's or owner's, landlord's, and tenant's policy of insurance for loss arising out of the discharge, dispersal, release, or escape of pollutants shall include an exception to the exclusion for bodily injury sustained within a building and caused by smoke, fumes, vapor, or soot produced by or originating from a heating system or ventilation system. This section applies to policies issued or delivered in this state on or after January 1, 2015.

Source: Laws 2014, LB876, § 1.
Effective date July 18, 2014.

44-310 Individual sickness and accident or medicare supplement policy; death of insured; refund of unearned premium.

In the event of the death of the insured of an individual sickness and accident or medicare supplement policy, the insurer, upon receipt of a request for a pro rata refund by a party legally entitled to claim such a refund, shall refund the unearned premium prorated to the month of the insured's death if the request has been made within one year after the insured's death. The refund of the premium and termination of the coverage shall be without prejudice to any claim originating prior to the date of the insured's death.

Source: Laws 2014, LB735, § 1.
Effective date July 18, 2014.

44-311 Health care sharing ministry; treatment under insurance laws.

(1) A health care sharing ministry shall not be considered to be engaging in the business of insurance for purposes of the insurance laws of this state.

(2) For purposes of this section, health care sharing ministry means a faith-based, nonprofit organization that is tax-exempt under the Internal Revenue Code which:

(a) Limits its participants to those who are of a similar faith;

(b) Acts as a facilitator among participants who have financial or medical needs and matches those participants with other participants with the present ability to assist those with financial or medical needs in accordance with criteria established by the health care sharing ministry;

(c) Provides for the financial or medical needs of a participant through contributions from one participant to another;

(d) Provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing ministry to the participants;

(e) Provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution;

(f) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that reads, in substance:

IMPORTANT NOTICE. This organization is not an insurance company, and its product should never be considered insurance. If you join this organization instead of purchasing health insurance, you will be considered uninsured. By the terms of this agreement, whether anyone chooses to assist you with your medical bills as a participant of this organization will be totally voluntary, and neither the organization nor any participant can be compelled by law to contribute toward your medical bills. Regardless of whether you receive payment for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills. This organization is not regulated by the Nebraska Department of Insurance. You should review this organization's guidelines carefully to be sure you understand any limitations that may affect your personal medical and financial needs;

(g) Has participants which retain participation even after they develop a medical condition; and

(h) Conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

Source: Laws 2014, LB700, § 12.

Operative date July 18, 2014.

44-361.01 Rebates; circumventing; presumptions.

(1) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed ten percent of the total commissions or underwriting fees

received during any one license year shall be presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be thirty percent for commissions and underwriting fees on crop insurance business.

(2) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed thirty percent of the total commissions and underwriting fees received during any one license year shall be conclusively presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be fifty percent for commissions and underwriting fees on crop insurance business.

Source: Laws 1955, c. 175, § 3, p. 503; Laws 2013, LB59, § 1.

44-3,143 Life insurance policy proceeds; payment of interest; when.

(1) Any insurance company authorized to do business in this state shall pay interest on any proceeds due on a life insurance policy if:

(a) The insured was a resident of this state on the date of death;

(b) The date of death was on or after June 6, 1991;

(c) The beneficiary elects in writing to receive the proceeds in a lump-sum payment; and

(d) The proceeds are not paid to the beneficiary within thirty days of receipt of proof of death of the insured by the insurance company.

(2) Interest shall accrue from the date of receipt of proof of death to the date of payment at the rate calculated pursuant to section 45-103 in effect on January 1 of the calendar year in which occurs the date of receipt of proof of death. For purposes of this section, date of payment shall include the date of the postmark stamped on an envelope, properly addressed and postage prepaid, containing the payment.

(3) If an action is commenced to recover the proceeds, this section shall not require the payment of interest for any period of time for which interest is awarded pursuant to sections 45-103 to 45-103.04.

(4) A violation of this section shall be an unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act.

Source: Laws 1991, LB 419, § 40; Laws 2011, LB72, § 1.

Cross References

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.

44-3,159 Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

(1) No health plan and no self-funded employee benefit plan to the extent not preempted by federal law shall assert any contractual rights to the proceeds of any resources purchased by or on behalf of the policyholder, subscriber, certificate holder, or enrollee, including medical payments coverage under a motor vehicle insurance policy, uninsured or underinsured motorist coverage,

accident or disability income coverage, specific disease or illness coverage, or hospital indemnity or other fixed indemnity coverage.

(2) This section shall not (a) affect the coordination of benefits between health plans or self-funded employee benefit plans, (b) prevent the coordination of benefits between a health plan or self-funded employee benefit plan and medical payments coverage under a motor vehicle insurance policy if such coordination of benefits applies medical payments coverage to deductible, copayment, and coinsurance amounts after discounts provided through the health plan or self-funded employee benefit plan, or (c) prevent the application of the medical payments coverage under a motor vehicle insurance policy to items not covered by a health plan or self-funded employee benefit plan.

(3) For purposes of this section, health plan means an individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state except for (a) policies that provide coverage for specified disease or other limited-benefit coverage or hospital indemnity or other fixed indemnity coverage or (b) self-funded employee benefit plans to the extent preempted by federal law.

Source: Laws 2013, LB479, § 1.

ARTICLE 4

INSURANCE RESERVES; POLICY PROVISIONS

Section

- 44-402. Repealed. Laws 2014, LB 755, § 19.
- 44-402.01. Life insurance; reserves; separate accounts; establish; procedure.
- 44-403. Life insurance; standard of valuation; policies issued prior to operative date of law.
- 44-404. Transferred to section 44-8907.
- 44-407.23. Company; when subject to law.
- 44-407.24. Policies issued on or after operative date of law; adjusted premiums; present values; how calculated; filing of election.
- 44-407.26. Policies issued on or after January 1, 1985; cash surrender value; nonforfeiture benefits; determination.
- 44-408. Life insurance companies; ascertainment of condition; assets and liabilities; what considered.

44-402 Repealed. Laws 2014, LB 755, § 19.

44-402.01 Life insurance; reserves; separate accounts; establish; procedure.

Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and upon approval of the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

Source: Laws 1972, LB 771, § 1; Laws 1987, LB 17, § 9; Laws 2005, LB 119, § 6; Laws 2011, LB72, § 2.

44-403 Life insurance; standard of valuation; policies issued prior to operative date of law.

This section shall apply to only those policies and contracts issued prior to the operative date defined in section 44-407.07 (the Standard Nonforfeiture Law for Life Insurance). All such valuations made by the Department of Insurance, or by its authority, shall be according to the standard of valuation adopted by the company, which standard shall be stated in its annual report to the department. Such standard of valuation, whether on the net level premium, preliminary term, any modified preliminary term, or select and ultimate reserve basis, for all such policies issued after July 17, 1913, shall be according to the American Experience or Actuaries' Table of Mortality, with not less than three and not more than four percent compound interest. When the preliminary term basis is used it shall not exceed one year. Insurance against total and permanent mental or physical disability resulting from accident or disease, or against accidental death, combined with a policy of life insurance, shall be valued on the basis of the mean reserve, being one-half of the additional annual premium charged therefor. Except as otherwise provided in subsection (3) of section 44-8907 for all annuities and pure endowments purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities shall be McClintock's Table of Mortality Among Annuitants, or the American Experience Table of Mortality, with compound interest at three and one-half percent per annum for individual annuities and five percent per annum for group annuities, but annuities deferred ten or more years, and written in connection with life or term insurance, shall be valued on the same mortality table from which the consideration or premiums were computed, with compound interest not higher than three and one-half percent per annum. The legal standard for the valuation of industrial policies shall be the American Experience Table of Mortality, with compound interest at not less than three nor more than three and one-half percent per annum, except that any life insurance company may voluntarily value its industrial policies written on the weekly payment plan according to the Standard Industrial Mortality Table or the Substandard Industrial Mortality Table. Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this section.

Source: Laws 1913, c. 154, § 94, p. 437; R.S.1913, § 3231; Laws 1919, c. 190, tit. V, art. VI, § 2, p. 618; C.S.1922, § 7830; C.S.1929, § 44-502; Laws 1943, c. 106, § 1(2), p. 355; R.S.1943, § 44-403; Laws 1973, LB 309, § 1; Laws 1979, LB 354, § 1; Laws 2014, LB755, § 13.
Effective date July 18, 2014.

44-404 Transferred to section 44-8907.

44-407.23 Company; when subject to law.

(1) After August 24, 1979, any company may file with the Department of Insurance a written notice of its election to comply with the provisions of sections 44-403, 44-407.08 to 44-407.23, and 44-8907 after a specified date before the second anniversary of August 24, 1979. After the filing of such notice, such specified date shall be the operative date of this act for such company. Annuity contracts thereafter issued by such company shall comply

with such sections. If a company makes no such election, the operative date of this act for such company shall be the second anniversary of August 24, 1979.

(2) After July 16, 2004, a company may elect to apply sections 44-407.08 to 44-407.23 to annuity contracts on a contract-form-by-contract-form basis before the second anniversary of July 16, 2004. In all other instances, sections 44-407.08 to 44-407.23 shall become operative with respect to annuity contracts issued by the company after the second anniversary of July 16, 2004.

(3) The director may adopt and promulgate rules and regulations to carry out sections 44-407.10 to 44-407.23.

Source: Laws 1979, LB 354, § 19; Laws 2004, LB 1047, § 7; Laws 2014, LB755, § 14.

Effective date July 18, 2014.

44-407.24 Policies issued on or after operative date of law; adjusted premiums; present values; how calculated; filing of election.

(1) This section shall apply to all policies issued on or after the operative date of this section as defined herein. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (a) the then present value of the future guaranteed benefits provided for by the policy; (b) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (c) one hundred twenty-five percent of the nonforfeiture net level premium as defined in this section. In applying the percentage specified in (c) above no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one percent per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premium, nonforfeiture net level premiums and present values shall be recalculated on the assumption that

future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (a) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (a) one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (b) one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b), where (a) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and (ii) the present value of the increase in future guaranteed benefits provided for by the policy; and (b) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) All adjusted premiums and present values referred to in sections 44-407 to 44-409 shall for all policies of ordinary insurance be calculated on the basis of (a) the Commissioners 1980 Standard Ordinary Mortality Table or (b) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be

calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year.

At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available whether or not required by section 44-407.01, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any. A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of such tables. For policies issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, any Commissioners Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the Department of Insurance approves by rule and regulation any commissioners standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual. For policies issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, any commissioners standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the valuation manual shall provide the commissioners standard mortality table for use in determining

the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the Department of Insurance approves by rule and regulation any commissioners standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(9) For policies issued before the operative date of the valuation manual designated in subsection (2) of section 44-8908, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section 44-8907, rounded to the nearer one-quarter of one percent, except that the nonforfeiture interest rate shall not be less than four percent. For policies issued on and after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

(10) Notwithstanding any other provision in sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907 to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) After the effective date of this section any company may file with the Department of Insurance a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989, except that the Director of Insurance may advance the operative date of this section for such a company after investigating and finding that (a) it is in the best interests of the policyholders of such company to do so, and (b) a majority of states in which such company is doing business have adopted legislation similar to sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907.

Source: Laws 1981, LB 355, § 11; Laws 2014, LB755, § 15.

Effective date July 18, 2014.

Cross References

Mortality tables, see Appendix.

44-407.26 Policies issued on or after January 1, 1985; cash surrender value; nonforfeiture benefits; determination.

This section, in addition to all other applicable provisions of sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the

beginning of each of the first ten policy years, from the sum of (a) the greater of zero and the basic cash value specified in this section and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary; *Provided, however*, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 44-407.02 or 44-407.04, whichever is applicable, shall be the same as are the effects specified in section 44-407.02 or 44-407.04, whichever is applicable, on the cash surrender values defined in that section.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 44-407.04 or 44-407.24, whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage (a) must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, and (b) must be such that no percentage after the later of the two policy anniversaries specified in the preceding item (a) may apply to fewer than five consecutive policy years. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section 44-407.04 or 44-407.24, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this Standard Nonforfeiture Law for Life Insurance. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 44-407.01 to 44-407.03, 44-407.05, and 44-407.24. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in section 44-407.05 shall conform with the principles of this section.

Source: Laws 1981, LB 355, § 13; Laws 2014, LB755, § 16.
Effective date July 18, 2014.

44-408 Life insurance companies; ascertainment of condition; assets and liabilities; what considered.

In ascertaining the condition of any life insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state or of the state or country in which it is organized at the date of examination. There shall be charged against it as liabilities in addition to the capital stock, all outstanding indebtedness of the company, and the premium reserve on policies and additions thereto in force, computed according to the tables of mortality and rate of interest prescribed in sections 44-402.01 to 44-407.09.

Source: Laws 1913, c. 154, § 95, p. 439; R.S.1913, § 3232; Laws 1919, c. 190, tit. V, art. VI, § 3, p. 619; C.S.1922, § 7831; C.S.1929, § 44-503; R.S.1943, § 44-408; Laws 1965, c. 262, § 11, p. 742; Laws 2014, LB755, § 17.
Effective date July 18, 2014.

ARTICLE 7

**GENERAL PROVISIONS COVERING LIFE, SICKNESS,
AND ACCIDENT INSURANCE**

Section

- 44-710. Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.
- 44-710.01. Sickness and accident insurance; standard policy provisions; requirements; enumeration.
- 44-710.03. Sickness and accident insurance; standard policy form; mandatory provisions.
- 44-710.04. Sickness and accident insurance; permissive provisions; standard policy form; requirements.
- 44-7,104. Coverage for orally administered anticancer medication; requirements; applicability.
- 44-7,105. Fees charged for dental services; prohibited acts.
- 44-7,106. Coverage for screening, diagnosis, and treatment of autism spectrum disorder; requirements.

44-710 Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.

(1) Except as otherwise provided by the Director of Insurance and subsection (2) of this section, no policy of sickness and accident insurance shall be delivered or issued for delivery in this state, nor shall any endorsement, rider, or application which becomes a part of any such policy be used, until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her opinion, and it shall thereafter be unlawful for such insurer to use such form in

this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) No sickness and accident insurance policy subject to the federal Patient Protection and Affordable Care Act, Public Law 111-148, shall be delivered or issued for delivery in this state, including any policy or certificate of sickness and accident insurance issued to or for associations not domiciled in this state other than a certificate issued to an employee under an employee benefit plan of an employer headquartered in another state where the policy is lawfully issued in that state, nor shall any endorsement, rider, certificate, or application which becomes a part of any such policy be used until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with and approved by the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1947, c. 164, § 2(1), p. 452; Laws 1951, c. 143, § 1, p. 581; Laws 1959, c. 209, § 1, p. 728; Laws 1969, c. 359, § 21, p. 1276; Laws 1989, LB 6, § 5; Laws 1989, LB 92, § 130; Laws 2013, LB336, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

44-710.01 Sickness and accident insurance; standard policy provisions; requirements; enumeration.

No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or

issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of an intellectual disability or a physical disability and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof, (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the policy provides health insurance as defined in section 44-4209.

Source: Laws 1957, c. 188, § 2, p. 643; Laws 1969, c. 374, § 1, p. 1333; Laws 1989, LB 92, § 131; Laws 1998, LB 1063, § 1; Laws 2009, LB551, § 1; Laws 2013, LB23, § 11.

44-710.03 Sickness and accident insurance; standard policy form; mandatory provisions.

Except as provided in section 44-710.05, each policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain the provisions specified in this section in the words in which the provisions appear in this section, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Director of Insurance which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: ENTIRE CONTRACT: CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the

entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows: **TIME LIMIT ON CERTAIN DEFENSES:** (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability, as defined in the policy, commencing after the expiration of such two-year period. The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period nor to limit the application of subdivisions (1) through (5) of section 44-710.04 in the event of misstatement with respect to age or occupation or other insurance. A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause "as defined in the policy" may be omitted at the insurer's option, under the caption **INCONTESTABLE:** After this policy has been in force for a period of two years during the lifetime of the insured, excluding any period during which the insured is disabled, it shall become incontestable as to the statements contained in the application. (b) No claim for loss incurred or disability, as defined in the policy, commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows: **GRACE PERIOD:** A grace period of . . . (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force. A policy which contains a cancellation provision may add, at the end of the above provision: Subject to the right of the insurer to cancel in accordance with the cancellation provision hereof. A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to his or her last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

(4) A provision as follows: **REINSTATEMENT:** If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy, except that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such

accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid but not to any period more than sixty days prior to the date of reinstatement. (The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

(5) A provision as follows: **NOTICE OF CLAIM:** Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer. In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he or she shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of such disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.

(6) A provision as follows: **CLAIM FORMS:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.

(7) A provision as follows: **PROOFS OF LOSS:** Written proof of loss must be furnished to the insurer at its office in case of claim for loss for which the policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time and if such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows: **TIME OF PAYMENT OF CLAIMS:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows: **PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured. The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: (a) If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed five thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment. (b) Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

(10) A provision as follows: **PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows: **LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows: **CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy, to any change of beneficiary or beneficiaries, or to any other changes in this policy. The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(13) A provision as follows: **CONFORMITY WITH STATE AND FEDERAL LAW:** Any provision of this policy which, on its effective date, is in conflict with

the law of the federal government or the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such law.

Source: Laws 1957, c. 188, § 4, p. 644; Laws 1989, LB 92, § 133; Laws 2011, LB72, § 3.

44-710.04 Sickness and accident insurance; permissive provisions; standard policy form; requirements.

Except as provided in sections 44-710.05 and 44-787, no policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the provisions appear in this section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Director of Insurance which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: **CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his or her occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change of occupation.

(2) A provision as follows: **MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) Except as provided in subdivision (6) of this section, a provision as follows: **OTHER INSURANCE IN THIS INSURER:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$..... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be

returned to the insured or to his or her estate; or in lieu thereof: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his or her beneficiary, or his or her estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) Except as provided in subdivision (6) of this section, a provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision-of-service basis or on an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense-incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision-of-service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage. If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase **EXPENSE-INCURRED BENEFITS.** The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(5) Except as provided in subdivision (6) of this section, a provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined. If the foregoing policy provision is included in a

policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase OTHER BENEFITS. The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(6) In lieu of the provisions set forth in subdivisions (3) through (5) of this section but subject to section 44-3,159, the insurer may at its option include a provision entitled COORDINATION OF BENEFITS which provides for nonduplication and coordination between two or more coverages based on rules and regulations adopted and promulgated by the director.

(7) A provision as follows: **RELATION OF EARNINGS TO INSURANCE:** If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of valid loss-of-time coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the Director of Insurance or any combination of such coverages. In the absence of such

definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

(8) A provision as follows: **UNPAID PREMIUM:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(9) A provision as follows: **CANCELLATION:** The insurer may cancel this policy at any time by written notice delivered to the insured which shall be effective only if mailed by certified or registered mail to the named insured at his or her last-known address, as shown by the records of the insurer, at least thirty days prior to the effective date of cancellation, except that cancellation due to failure to pay the premium or in cases of fraud or misrepresentation shall not require that such notice be given at least thirty days prior to cancellation. Subject to any provisions in the policy or a grace period, cancellation for failure to pay a premium shall be effective as of midnight of the last day for which the premium has been paid. In cases of fraud or misrepresentation, coverage shall be canceled upon the date of the notice or any later date designated by the insurer. After the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(10) A provision as follows: **ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows: **INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

Source: Laws 1957, c. 188, § 5, p. 650; Laws 1985, LB 76, § 1; Laws 1989, LB 92, § 134; Laws 1997, LB 55, § 2; Laws 2011, LB72, § 4; Laws 2013, LB479, § 2.

44-7,104 Coverage for orally administered anticancer medication; requirements; applicability.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of

cancerous cells on a basis no less favorable than intravenously administered or injected anticancer medications that are covered as medical benefits by the policy, certificate, contract, or plan.

(2) This section does not prohibit such policy, certificate, contract, or plan from requiring prior authorization for a prescribed, orally administered anticancer medication. If such medication is authorized, the cost to the covered individual shall not exceed the coinsurance or copayment that would be applied to any other cancer treatment involving intravenously administered or injected anticancer medications.

(3) A policy, certificate, contract, or plan provider shall not reclassify any anticancer medication or increase a coinsurance, copayment, deductible, or other out-of-pocket expense imposed on any anticancer medication to achieve compliance with this section. Any change that otherwise increases an out-of-pocket expense applied to any anticancer medication shall also be applied to the majority of comparable medical or pharmaceutical benefits under the policy, certificate, contract, or plan.

(4) This section does not prohibit a policy, certificate, contract, or plan provider from increasing cost-sharing for all benefits, including cancer treatments.

(5) This section shall apply to any policy, certificate, contract, or plan that is delivered, issued for delivery, or renewed in this state on or after October 1, 2012.

Source: Laws 2012, LB882, § 1; Laws 2014, LB254, § 1.
Operative date July 18, 2014.

44-7,105 Fees charged for dental services; prohibited acts.

Notwithstanding section 44-3,131, (1) an individual or group sickness or accident policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and a hospital, medical, or surgical expense-incurred policy, (2) a self-funded employee benefit plan to the extent not preempted by federal law, and (3) a certificate, agreement, or contract to provide limited health services issued by a prepaid limited health service organization as defined in section 44-4702 shall not include a provision, stipulation, or agreement establishing or limiting any fees charged for dental services that are not covered by the policy, certificate, contract, agreement, or plan.

Source: Laws 2012, LB810, § 1.

44-7,106 Coverage for screening, diagnosis, and treatment of autism spectrum disorder; requirements.

(1) For purposes of this section:

(a) Applied behavior analysis means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;

(b) Autism spectrum disorder means any of the pervasive developmental disorders or autism spectrum disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders, as the most recent edition of such manual existed on July 18, 2014;

(c) Behavioral health treatment means counseling and treatment programs, including applied behavior analysis, that are: (i) Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and (ii) provided or supervised, either in person or by telehealth, by a behavior analyst certified by a national certifying organization or a licensed psychologist if the services performed are within the boundaries of the psychologist's competency;

(d) Diagnosis means a medically necessary assessment, evaluation, or test to diagnose if an individual has an autism spectrum disorder;

(e) Pharmacy care means a medication that is prescribed by a licensed physician and any health-related service deemed medically necessary to determine the need or effectiveness of the medication;

(f) Psychiatric care means a direct or consultative service provided by a psychiatrist licensed in the state in which he or she practices;

(g) Psychological care means a direct or consultative service provided by a psychologist licensed in the state in which he or she practices;

(h) Therapeutic care means a service provided by a licensed speech-language pathologist, occupational therapist, or physical therapist; and

(i) Treatment means evidence-based care, including related equipment, that is prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist, including:

- (i) Behavioral health treatment;
- (ii) Pharmacy care;
- (iii) Psychiatric care;
- (iv) Psychological care; and
- (v) Therapeutic care.

(2) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law, including any such plan provided for employees of the State of Nebraska, shall provide coverage for the screening, diagnosis, and treatment of an autism spectrum disorder in an individual under twenty-one years of age. To the extent that the screening, diagnosis, and treatment of autism spectrum disorder are not already covered by such policy or contract, coverage under this section shall be included in such policies or contracts that are delivered, issued for delivery, amended, or renewed in this state or outside this state if the policy or contract insures a resident of Nebraska on or after January 1, 2015. No insurer shall terminate coverage or refuse to deliver, issue for delivery, amend, or renew coverage of the insured as a result of an autism spectrum disorder diagnosis or treatment. Nothing in this subsection applies to non-grandfathered plans in the individual and small group markets that are required to include essential health benefits under the federal Patient Protection and Affordable Care Act or to medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(3) Except as provided in subsection (4) of this section, coverage for an autism spectrum disorder shall not be subject to any limits on the number of visits an individual may make for treatment of an autism spectrum disorder, nor shall such coverage be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable to an insured than the equivalent provisions that apply to a general physical illness under the policy.

(4) Coverage for behavioral health treatment, including applied behavior analysis, shall be subject to a maximum benefit of twenty-five hours per week until the insured reaches twenty-one years of age. Payments made by an insurer on behalf of a covered individual for treatment other than behavioral health treatment, including applied behavior analysis, shall not be applied to any maximum benefit established under this section.

(5) Except in the case of inpatient service, if an individual is receiving treatment for an autism spectrum disorder, an insurer shall have the right to request a review of that treatment not more than once every six months unless the insurer and the individual's licensed physician or licensed psychologist execute an agreement that a more frequent review is necessary. Any such agreement regarding the right to review a treatment plan more frequently shall apply only to a particular individual being treated for an autism spectrum disorder and shall not apply to all individuals being treated for autism spectrum disorder by a licensed physician or licensed psychologist. The cost of obtaining a review under this subsection shall be borne by the insurer.

(6) This section shall not be construed as limiting any benefit that is otherwise available to an individual under a hospital, surgical, or medical expense-incurred policy or health maintenance organization contract. This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, individualized education program, or individualized service plan.

Source: Laws 2014, LB254, § 2.

Operative date July 18, 2014.

ARTICLE 10

FRATERNAL INSURANCE

Section

44-1090. Benefit contract; contents.

44-1090 Benefit contract; contents.

(1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided by the contract. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this subsection shall be void.

(2) Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate shall bind the

owner and the beneficiaries and shall govern and control the benefit contract in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance of the contract.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board and that if the payment is not made either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or (b) in lieu of or in combination with subdivision (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) A domestic society may assess owners as described in subsection (4) of this section only after such assessment is filed with the Director of Insurance and approved by him or her. In the case of a foreign or alien society, notice of an assessment shall be provided to the director at least thirty days before the effective date of the assessment. The director shall have the authority to prohibit any foreign or alien society that has assessed its owners from issuing any new contracts of insurance in this state.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(7) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the Director of Insurance in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from September 6, 1985, shall meet the standard contract provision requirements not inconsistent with sections 44-1072 to 44-10,109 for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

Source: Laws 1985, LB 508, § 19; Laws 2013, LB426, § 1.

ARTICLE 13

HEALTH CARRIER EXTERNAL REVIEW ACT

Section

- 44-1301. Act, how cited.
- 44-1302. Purpose of act.
- 44-1303. Terms, defined.
- 44-1304. Applicability of act.
- 44-1305. Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.
- 44-1306. Request for external review.
- 44-1307. Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.
- 44-1308. Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.
- 44-1309. Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.
- 44-1310. Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.
- 44-1311. External review decision; how treated; limitation on subsequent request.
- 44-1312. Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.
- 44-1313. Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.
- 44-1314. Liability for damages.
- 44-1315. Records; report; contents.
- 44-1316. Health carrier; cost.
- 44-1317. Health carrier; disclosure; format; contents.
- 44-1318. Applicability of act.

44-1301 Act, how cited.

Sections 44-1301 to 44-1318 shall be known and may be cited as the Health Carrier External Review Act.

Source: Laws 2013, LB147, § 1.

44-1302 Purpose of act.

The purpose of the Health Carrier External Review Act is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination.

Source: Laws 2013, LB147, § 2.

44-1303 Terms, defined.

For purposes of the Health Carrier External Review Act:

(1) Adverse determination means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefor denied, reduced, or terminated;

(2) Ambulatory review means the utilization review of health care services performed or provided in an outpatient setting;

(3) Authorized representative means:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent;

(4) Benefits or covered benefits means those health care services to which a covered person is entitled under the terms of a health benefit plan;

(5) Best evidence means evidence based on:

(a) Randomized clinical trials;

(b) If randomized clinical trials are not available, cohort studies or case-control studies;

(c) If the criteria described in subdivisions (5)(a) and (b) of this section are not available, case-series; or

(d) If the criteria described in subdivisions (5)(a), (b), and (c) of this section are not available, expert opinions;

(6) Case-control study means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received;

(7) Case management means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions;

(8) Case-series means an evaluation of a series of patients with a particular outcome, without the use of a control group;

(9) Certification means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service has been reviewed and, based upon

the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness;

(10) Clinical review criteria means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services;

(11) Cohort study means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention;

(12) Concurrent review means a utilization review conducted during a patient's hospital stay or course of treatment;

(13) Covered person means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(14) Director means the Director of Insurance;

(15) Discharge planning means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(16) Disclose means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information;

(17) Emergency medical condition means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention if failure to provide such medical attention would result in a serious impairment to bodily functions or serious dysfunction of a bodily organ or part or would place the person's health in serious jeopardy;

(18) Emergency services means health care items and services furnished or required to evaluate and treat an emergency medical condition;

(19) Evidence-based standard means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of an individual patient;

(20) Expert opinion means a belief or an interpretation by a specialist with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy;

(21) Facility means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

(22) Final adverse determination means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's internal grievance process procedures as set forth in the Health Carrier Grievance Procedure Act;

(23) Health benefit plan means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services;

(24) Health care professional means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law;

(25) Health care provider or provider means a health care professional or a facility;

(26) Health care services means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(27) Health carrier means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services;

(28) Health information means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual or a member of the individual's family;

(b) The provision of health care services to an individual; or

(c) Payment for the provision of health care services to an individual;

(29) Independent review organization means an entity that conducts independent external reviews of adverse determinations and final adverse determinations;

(30) Medical or scientific evidence means evidence found in the following sources:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's United States National Library of Medicine for indexing in Index Medicus, known as Medline, and Elsevier Science Ltd. for indexing in Excerpta Medica, known as Embase;

(c) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the federal Social Security Act;

(d) The following standard reference compendia:

(i) The AHFS Drug Information;

(ii) Drug Facts and Comparisons;

(iii) The American Dental Association Guide to Dental Therapeutics; and

(iv) The United States Pharmacopoeia Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

(i) The federal Agency for Healthcare Research and Quality of the United States Department of Health and Human Services;

(ii) The National Institutes of Health;

(iii) The National Cancer Institute;

- (iv) The National Academy of Sciences;
 - (v) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;
 - (vi) The federal Food and Drug Administration; and
 - (vii) Any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services; or
 - (f) Any other medical or scientific evidence that is comparable to the sources listed in subdivisions (30)(a) through (e) of this section;
- (31) Prospective review means a utilization review conducted prior to an admission or a course of treatment;
- (32) Protected health information means health information:
- (a) That identifies an individual who is the subject of the information; or
 - (b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual;
- (33) Randomized clinical trial means a controlled, prospective study of patients that have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time;
- (34) Retrospective review means a review of medical necessity conducted after health care services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment;
- (35) Second opinion means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service;
- (36) Utilization review means a set of formal techniques designed to monitor the use or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review; and
- (37) Utilization review organization means an entity that conducts a utilization review, other than a health carrier performing a review for its own health benefit plans.

Source: Laws 2013, LB147, § 3.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

44-1304 Applicability of act.

- (1) Except as provided in subsection (2) of this section, the Health Carrier External Review Act shall apply to all health carriers.
- (2)(a) The act shall not apply to a policy or certificate that provides coverage for:
- (i) A specified disease, specified accident, or accident-only coverage;
 - (ii) Credit;

- (iii) Dental;
- (iv) Disability income;
- (v) Hospital indemnity;
- (vi) Long-term care insurance as defined in section 44-4509;
- (vii) Vision care; or
- (viii) Any other limited supplemental benefit.

(b) The act shall not apply to:

- (i) A medicare supplement policy of insurance as defined in section 44-3602;
- (ii) Coverage under a plan through medicare, medicaid, or the Federal Employees Health Benefits Program;
- (iii) Any coverage issued under Chapter 55 of Title 10 of the United States Code and any coverage issued as a supplement to that coverage;
- (iv) Any coverage issued as supplemental to liability insurance;
- (v) Workers' compensation or similar insurance;
- (vi) Automobile medical-payment insurance; or
- (vii) Any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis.

Source: Laws 2013, LB147, § 4.

44-1305 Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.

(1)(a) A health carrier shall notify the covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 44-1308, 44-1309, or 44-1310 and include the appropriate statements and information as set forth in subsection (2) of this section at the same time that the health carrier sends written notice of:

- (i) An adverse determination upon completion of the health carrier's utilization review process set forth in the Utilization Review Act; and
- (ii) A final adverse determination.

(b) As part of the written notice required under subdivision (1)(a) of this section, a health carrier shall include the following, or substantially equivalent, language: We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the Director of Insurance (insert address and telephone number of the office of the director).

(c) The director may prescribe by rule and regulation the form and content of the notice required under this section.

(2)(a) The health carrier shall include in the notice required under subsection (1) of this section:

- (i) For a notice related to an adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of an expedited review of a grievance involving an adverse determination as set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to section 44-1309 or 44-1310 if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated, at the same time the covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, but that the independent review organization assigned to conduct the expedited external review will determine whether the covered person shall be required to complete the expedited review of the grievance prior to conducting the expedited external review; and

(B) The covered person or the covered person's authorized representative may file a grievance under the health carrier's internal grievance process as set forth in section 44-7308, but if the health carrier has not issued a written decision to the covered person or his or her authorized representative within thirty days following the date that the covered person or his or her authorized representative files the grievance with the health carrier and the covered person or his or her authorized representative has not requested or agreed to a delay, the covered person or his or her authorized representative may file a request for external review pursuant to section 44-1306 and shall be considered to have exhausted the health carrier's internal grievance process for purposes of section 44-1307; and

(ii) For a notice related to a final adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review pursuant to section 44-1309; or

(B) If the final adverse determination concerns:

(I) An admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, the covered person or the covered person's authorized representative may request an expedited external review pursuant to section 44-1309; or

(II) A denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational, the covered person or the covered person's authorized representative may file a request for a standard external review to be conducted pursuant to section 44-1310 or if the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject

of the request would be significantly less effective if not promptly initiated, the covered person or his or her authorized representative may request an expedited external review to be conducted under section 44-1310.

(b) In addition to the information to be provided pursuant to subdivision (2)(a) of this section, the health carrier shall include a copy of the description of both the standard and expedited external review procedures that the health carrier is required to provide pursuant to section 44-1317 and shall highlight the provisions in the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information and include any forms used to process an external review.

(c) As part of any forms provided under subdivision (2)(b) of this section, the health carrier shall include an authorization form or other document approved by the director that complies with the requirements of 45 C.F.R. 164.508, by which the covered person, for purposes of conducting an external review under the Health Carrier External Review Act, authorizes the health carrier and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that are pertinent to the external review.

Source: Laws 2013, LB147, § 5.

Cross References

Utilization Review Act, see section 44-5416.

44-1306 Request for external review.

(1)(a) Except for a request for an expedited external review as set forth in section 44-1309, all requests for external review shall be made in writing to the director.

(b) The director may prescribe by rule and regulation the form and content of external review requests required to be submitted under this section.

(2) A covered person or the covered person's authorized representative may make a request for an external review of an adverse determination or final adverse determination.

Source: Laws 2013, LB147, § 6.

44-1307 Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.

(1)(a) Except as provided in subsection (2) of this section, a request for an external review pursuant to section 44-1308, 44-1309, or 44-1310 shall not be made until the covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(b) A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of this section if the covered person or the covered person's authorized representative:

(i) Has filed a grievance involving an adverse determination pursuant to section 44-7308; and

(ii) Except to the extent that the covered person or the covered person's authorized representative requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within thirty days

following the date that the covered person or the covered person's authorized representative filed the grievance with the health carrier.

(c) Notwithstanding subdivision (1)(b) of this section, a covered person or the covered person's authorized representative may not make a request for an external review of an adverse determination involving a retrospective review determination made pursuant to the Utilization Review Act until the covered person has exhausted the health carrier's internal grievance process.

(2)(a)(i) At the same time that a covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, the covered person or his or her authorized representative may file a request for an expedited external review of the adverse determination:

(A) Under section 44-1309 if the covered person has a medical condition in which the timeframe for completion of an expedited review of the grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(B) Under section 44-1310 if the adverse determination involves a denial of coverage based upon a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review under subdivision (2)(a)(i) of this section, the independent review organization conducting the external review in accordance with the provisions of section 44-1309 or 44-1310 shall determine whether the covered person shall be required to complete the expedited grievance review process set forth in section 44-7311 before it conducts the expedited external review.

(iii) Upon a determination made pursuant to subdivision (2)(a)(ii) of this section that the covered person must first complete the expedited grievance review process set forth in section 44-7311, the independent review organization shall immediately notify the covered person and, if applicable, the covered person's authorized representative of such determination and the fact that it will not proceed with the expedited external review set forth in section 44-1309 until completion of the expedited grievance review process and the covered person's grievance at the completion of the expedited grievance review process remains unresolved.

(b) A request for an external review of an adverse determination may be made before the covered person has exhausted the health carrier's internal grievance procedures as set forth in section 44-7308 if the health carrier agrees to waive the exhaustion requirement.

(3) If the requirement to exhaust the health carrier's internal grievance procedures is waived under subdivision (2)(b) of this section, the covered person or the covered person's authorized representative may file a request in writing for a standard external review as set forth in section 44-1308 or 44-1310.

Source: Laws 2013, LB147, § 7.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

44-1308 Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305, a covered person or the covered person's authorized representative may file a request for an external review with the director.

(b) Within one business day after the date of receipt of a request for an external review pursuant to subdivision (1)(a) of this section, the director shall send a copy of the request to the health carrier.

(2) Within five business days following the date of receipt of the copy of the external review request from the director under subdivision (1)(b) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time that the health care service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service was provided;

(b) The health care service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and covered person and, if applicable, the covered person's authorized representative, in writing whether:

- (i) The request is complete; and
- (ii) The request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representa-

tive and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(4)(a) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to subsection (3) of this section, the director shall, within one business day after the date of receipt of the notice:

(i) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(c) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or his or her authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization is not required to but may accept and consider additional information submitted after five business days.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Within one business day after making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director.

(6)(a) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section, the assigned independent review organization shall forward the information to the health carrier within one business day.

(7)(a) Upon receipt of the information, if any, required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

(d)(i) Within one business day after making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person and, if applicable, the covered person's authorized representative, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8) In addition to the documents and information provided pursuant to subsection (5) of this section, the assigned independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (8)(a) through (f) of this section to the extent that the information or documents are available and the clinical reviewer or reviewers consider it appropriate.

(9)(a) Within forty-five days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(b) The independent review organization shall include in the notice sent pursuant to subdivision (9)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The date that the independent review organization received the assignment from the director to conduct the external review;

(iii) The date that the external review was conducted;

(iv) The date of its decision;

(v) The principal reason or reasons for its decision, including what applicable, if any, evidence-based standards were a basis for its decision;

(vi) The rationale for its decision; and

(vii) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision.

(c) Upon receipt of a notice of a decision pursuant to subdivision (9)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(10) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 8.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

Utilization Review Act, see section 44-5416.

44-1309 Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.

(1) Except as provided in subsection (6) of this section, a covered person or the covered person's authorized representative may make a request for an expedited external review with the director at the time that the covered person receives:

(a) An adverse determination if:

(i) The adverse determination involves a medical condition of the covered person for which the timeframe for completion of an expedited internal review of a grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(ii) The covered person or the covered person's authorized representative has filed a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311; or

(b) A final adverse determination:

(i) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(ii) If the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility.

(2)(a) Upon receipt of a request for an expedited external review, the director shall immediately send a copy of the request to the health carrier.

(b) Immediately upon receipt of the request pursuant to subdivision (2)(a) of this section, the health carrier shall determine whether the request meets the reviewability requirements set forth in subsection (2) of section 44-1308. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that an external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of section 44-1308 notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (2)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered

person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Upon receipt of the notice that the request meets the reviewability requirements, the director shall immediately assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312. The director shall immediately notify the health carrier of the name of the assigned independent review organization.

(f) In reaching a decision in accordance with subsection (5) of this section, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Health Carrier Grievance Procedure Act or the Utilization Review Act.

(3) Upon receipt of the notice from the director of the name of the independent review organization assigned to conduct the expedited external review pursuant to subdivision (2)(e) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(4) In addition to the documents and information provided or transmitted pursuant to subsection (3) of this section, the assigned independent review organization, to the extent that the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's pertinent medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization in making adverse determinations; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (4)(a) through (f) of this section to the extent that the information and documents are available and the clinical reviewer or reviewers consider it appropriate.

(5)(a) As expeditiously as the covered person's medical condition or circumstances requires, but in no event more than seventy-two hours after the date of receipt of the request for an expedited external review that meets the reviewa-

bility requirements set forth in subsection (2) of section 44-1308, the assigned independent review organization shall:

(i) Make a decision to uphold or reverse the adverse determination or final adverse determination; and

(ii) Notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director of the decision.

(b) If the notice provided pursuant to subdivision (5)(a) of this section was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall:

(i) Provide written confirmation of the decision to the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director; and

(ii) Include the information set forth in subdivision (9)(b) of section 44-1308.

(c) Upon receipt of the notice of a decision pursuant to subdivision (5)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(6) An expedited external review may not be provided for retrospective adverse or final adverse determinations.

(7) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 9.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

Utilization Review Act, see section 44-5416.

44-1310 Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305 that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, a covered person or the covered person's authorized representative may file a request for external review with the director.

(b)(i) A covered person or the covered person's authorized representative may make an oral request for an expedited external review of the adverse determination or final adverse determination pursuant to subdivision (1)(a) of this section if the covered person's treating physician certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review, the director shall immediately notify the health carrier.

(iii)(A) Upon notice of the request for expedited external review, the health carrier shall immediately determine whether the request meets the reviewability requirements of subdivision (2)(b) of this section. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(B) The director may specify the form for the health carrier's notice of initial determination under subdivision (1)(b)(iii)(A) of this section and any supporting information to be included in the notice.

(C) The notice of initial determination under subdivision (1)(b)(iii)(A) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(iv)(A) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(B) In making a determination under subdivision (1)(b)(iii)(A) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(v) Upon receipt of the notice that the expedited external review request meets the reviewability requirements of subdivision (2)(b) of this section, the director shall immediately assign an independent review organization to review the expedited request from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization.

(vi) At the time the health carrier receives the notice of the assigned independent review organization pursuant to subdivision (1)(b)(v) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(2)(a) Except for a request for an expedited external review made pursuant to subdivision (1)(b) of this section, within one business day after the date of receipt of the request the director receives a request for an external review, the director shall notify the health carrier.

(b) Within five business days following the date of receipt of the notice sent pursuant to subdivision (2)(a) of this section, the health carrier shall conduct and complete a preliminary review of the request to determine whether:

(i) The individual is or was a covered person in the health benefit plan at the time that the health care service or treatment was recommended or requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service or treatment was provided;

(ii) The recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination:

(A) Is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition; and

(B) Is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier;

(iii) The covered person's treating physician has certified that one of the following situations is applicable:

(A) Standard health care services or treatments have not been effective in improving the condition of the covered person;

(B) Standard health care services or treatments are not medically appropriate for the covered person; or

(C) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the recommended or requested health care service or treatment described in subdivision (2)(b)(iv) of this section;

(iv) The covered person's treating physician:

(A) Has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care service or treatment; or

(B) Who is a licensed, board-certified or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested by the covered person that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care service or treatment;

(v) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(vi) The covered person has provided all the information and forms required by the director that are necessary to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative in writing whether the request is complete and the request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform, in writing, the director and the covered person and, if applicable, the covered person's authorized representative and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person, the covered person's authorized representative, if applicable,

and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under subdivision (3)(b) of this section and any supporting information to be included in the notice.

(ii) The notice of initial determination provided under subdivision (3)(b) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Whenever a request for external review is determined eligible for external review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative.

(4)(a) Within one business day after the receipt of the notice from the health carrier that the external review request is eligible for external review pursuant to subdivision (1)(b)(iv) of this section or subdivision (3)(e) of this section, the director shall:

(i) Assign an independent review organization to conduct the external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization may accept and consider additional information submitted after five business days.

(c) Within one business day after the receipt of the notice of assignment to conduct the external review pursuant to subdivision (4)(a) of this section, the assigned independent review organization shall:

(i) Select one or more clinical reviewers, as it determines is appropriate, pursuant to subdivision (4)(d) of this section to conduct the external review; and

(ii) Based upon the opinion of the clinical reviewer, or opinions if more than one clinical reviewer has been selected to conduct the external review, make a

decision to uphold or reverse the adverse determination or final adverse determination.

(d)(i) In selecting clinical reviewers pursuant to subdivision (4)(c)(i) of this section, the assigned independent review organization shall select physicians or other health care professionals who meet the minimum qualifications described in section 44-1313 and, through clinical experience in the past three years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment.

(ii) Neither the covered person, the covered person's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review.

(e) In accordance with subsection (8) of this section, each clinical reviewer shall provide a written opinion to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered.

(f) In reaching an opinion, a clinical reviewer is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or the final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its designee utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its designee utilization review organization has failed to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Immediately upon making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person, the covered person's authorized representative, if applicable, the health carrier, and the director.

(6)(a) Each clinical reviewer selected pursuant to subsection (4) of this section shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section, within one business day after the receipt of the information, the assigned independent review organization shall forward the information to the health carrier.

(7)(a) Upon receipt of the information required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may be terminated only if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination.

(d)(i) Immediately upon making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person, the covered person's authorized representative, if applicable, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8)(a) Except as provided in subdivision (8)(c) of this section, within twenty days after being selected in accordance with subsection (4) of this section to conduct the external review, each clinical reviewer shall provide an opinion to the assigned independent review organization pursuant to subsection (9) of this section on whether the recommended or requested health care service or treatment should be covered.

(b) Except for an opinion provided pursuant to subdivision (8)(c) of this section, each clinical reviewer's opinion shall be in writing and include the following information:

(i) A description of the covered person's medical condition;

(ii) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risk of the recommended or requested health care service or treatment would not be substantially increased over that of available standard health care service or treatment;

(iii) A description and analysis of any medical or scientific evidence considered in reaching the opinion;

(iv) A description and analysis of any evidence-based standard; and

(v) Information on whether the reviewer's rationale for the opinion is based on subdivision (9)(e)(i) or (ii) of this section.

(c) For an expedited external review, each clinical reviewer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances requires, but in no event more than five calendar days after being selected in accordance with subsection (4) of this section.

(d) If the opinion provided pursuant to subdivision (8)(a) of this section was not in writing, within forty-eight hours following the date that the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include the information required under subdivision (8)(b) of this section.

(9) In addition to the documents and information provided pursuant to subdivision (1)(b) of this section or subsection (5) of this section, each clinical reviewer selected pursuant to subsection (4) of this section, to the extent the information or documents are available and the reviewer considers appropriate, shall consider the following in reaching an opinion pursuant to subsection (8) of this section:

(a) The covered person's pertinent medical records;

(b) The attending physician or health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, if applicable, or the covered person's treating physician or health care professional;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier; and

(e) Whether:

(i) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(ii) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care service or treatment.

(10)(a)(i) Except as provided in subdivision (10)(a)(ii) of this section, within twenty days after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide written notice of the decision to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(ii)(A) For an expedited external review, within forty-eight hours after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide notice of the decision orally or in writing to the persons listed in subdivision (10)(a)(i) of this section.

(B) If the notice provided under subdivision (10)(a)(ii)(A) of this section was not in writing, within forty-eight hours after the date of providing that notice,

the assigned independent review organization shall provide written confirmation of the decision to the persons listed in subdivision (10)(a)(i) of this section and include the information set forth in subdivision (10)(c) of this section.

(b)(i) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

(ii) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

(iii)(A) If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers pursuant to subdivision (10)(b)(i) or (ii) of this section.

(B) The additional clinical reviewer selected under subdivision (10)(b)(iii)(A) of this section shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions pursuant to subsection (9) of this section.

(C) The selection of the additional clinical reviewer shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers selected under subsection (4) of this section pursuant to subdivision (4)(a) of this section.

(c) The independent review organization shall include in the notice provided pursuant to subdivision (10)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(iii) The date the independent review organization was assigned by the director to conduct the external review;

(iv) The date the external review was conducted;

(v) The date of its decision;

(vi) The principal reason or reasons for its decision; and

(vii) The rationale for its decision.

(d) Upon receipt of a notice of a decision pursuant to subdivision (10)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse determination or final adverse determination.

(11) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination

or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 10.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.

Utilization Review Act, see section 44-5416.

44-1311 External review decision; how treated; limitation on subsequent request.

(1) An external review decision is binding on the health carrier except to the extent the health carrier has other remedies available under applicable state law.

(2) An external review decision is binding on the covered person except to the extent the covered person has other remedies available under applicable federal or state law.

(3) A covered person or the covered person's authorized representative, if applicable, shall not file a subsequent request for external review involving the same adverse determination or final adverse determination for which the covered person has already received an external review decision pursuant to the Health Carrier External Review Act.

Source: Laws 2013, LB147, § 11.

44-1312 Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.

(1) The director shall approve independent review organizations eligible to be assigned to conduct external reviews under the Health Carrier External Review Act.

(2) In order to be eligible for approval by the director under this section to conduct external reviews under the act, an independent review organization:

(a) Except as otherwise provided in this section, shall be accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under section 44-1313; and

(b) Shall submit an application for approval in accordance with subsection (4) of this section.

(3) The director shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4)(a) Any independent review organization wishing to be approved to conduct external reviews under the act shall submit the application form and include with the form all documentation and information necessary for the director to determine if the independent review organization satisfies the minimum qualifications established under section 44-1313.

(b)(i) Subject to subdivision (4)(b)(ii) of this section, an independent review organization is eligible for approval under this section only if it is accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are

equivalent to or exceed the minimum qualifications for independent review organizations under section 44-1313.

(ii) The director may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

(c) The director may charge an application fee that independent review organizations shall submit to the director with an application for approval and reapproval.

(5)(a) An approval is effective for two years, unless the director determines before its expiration that the independent review organization is not satisfying the minimum qualifications established under section 44-1313.

(b) Whenever the director determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under section 44-1313, the director shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to conduct external reviews under the act that is maintained by the director pursuant to subsection (6) of this section.

(6) The director shall maintain and periodically update a list of approved independent review organizations.

(7) The director may adopt and promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 2013, LB147, § 12.

44-1313 Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.

(1) To be approved under section 44-1312 to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in the Health Carrier External Review Act that include, at a minimum:

(a) A quality assurance mechanism in place that:

(i) Ensures that external reviews are conducted within the specified timeframes and that required notices are provided in a timely manner;

(ii) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective;

(iii) Ensures the confidentiality of medical and treatment records and clinical review criteria; and

(iv) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of the act;

(b) A toll-free telephone service to receive information on a twenty-four-hours-per-day, seven-days-per-week basis related to external reviews that is

capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours; and

(c) An agreement to maintain and provide to the director the information set out in section 44-1315.

(2) All clinical reviewers assigned by an independent review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(a) Be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(b) Be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition of the covered person;

(c) Hold a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized medical specialty board in the United States in the area or areas appropriate to the subject of the external review; and

(d) Have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

(3) In addition to the requirements set forth in subsection (1) of this section, an independent review organization may not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

(4)(a) In addition to the requirements set forth in subsections (1), (2), and (3) of this section, to be approved pursuant to section 44-1312 to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical reviewer assigned by the independent review organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

(i) The health carrier that is the subject of the external review;

(ii) The covered person whose treatment is the subject of the external review or the covered person's authorized representative, if applicable;

(iii) Any officer, director, or management employee of the health carrier that is the subject of the external review;

(iv) The health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

(v) The facility at which the recommended health care service or treatment would be provided; or

(vi) The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(b) In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional,

familial, or financial conflict of interest for purposes of subdivision (4)(a) of this section, the director shall take into consideration situations in which the independent review organization to be assigned to conduct an external review of a specified case or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subdivision (4)(a) of this section, but that the characteristics of that relationship or connection are such that they are not a material professional, familial, or financial conflict of interest that results in the disapproval of the independent review organization or the clinical reviewer from conducting the external review.

(5)(a) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the director has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed in compliance with this section to be eligible for approval under section 44-1312.

(b) The director shall initially review and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section. The director may accept a review conducted by the National Association of Insurance Commissioners for the purpose of the determination under this subdivision.

(c) Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the director or the National Association of Insurance Commissioners in order for the director to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The director may exclude any private accrediting entity that is not reviewed by the National Association of Insurance Commissioners.

(6) An independent review organization shall be unbiased. An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this section.

Source: Laws 2013, LB147, § 13.

44-1314 Liability for damages.

No independent review organization, clinical reviewer working on behalf of an independent review organization, or employee, agent, or contractor of an independent review organization shall be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to the Health Carrier External Review Act, unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence.

Source: Laws 2013, LB147, § 14.

44-1315 Records; report; contents.

(1)(a) An independent review organization assigned pursuant to section 44-1308, 44-1309, or 44-1310 to conduct an external review shall maintain written records in the aggregate by state and by health carrier on all requests for external review for which it conducted an external review during a calendar year and, upon request, submit a report to the director as required under subdivision (1)(b) of this section.

(b) Each independent review organization required to maintain written records on all requests for external review pursuant to subdivision (1)(a) of this section for which it was assigned to conduct an external review shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate by state, and for each health carrier:

(i) The total number of requests for external review;

(ii) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(iii) The average length of time for resolution;

(iv) A summary of the types of coverages or cases for which an external review was sought, as provided in the format required by the director;

(v) The number of external reviews pursuant to section 44-1308 that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative; and

(vi) Any other information the director may request or require.

(d) The independent review organization shall retain the written records required pursuant to this subsection for at least three years.

(2)(a) Each health carrier shall maintain written records in the aggregate, by state and for each type of health benefit plan offered by the health carrier, on all requests for external review that the health carrier receives notice of from the director pursuant to the Health Carrier External Review Act.

(b) Each health carrier required to maintain written records on all requests for external review pursuant to subdivision (2)(a) of this section shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate, by state, and by type of health benefit plan:

(i) The total number of requests for external review;

(ii) From the total number of requests for external review reported under subdivision (2)(c)(i) of this section, the number of requests determined eligible for a full external review; and

(iii) Any other information the director may request or require.

(d) The health carrier shall retain the written records required pursuant to this section for at least three years.

Source: Laws 2013, LB147, § 15.

44-1316 Health carrier; cost.

The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the cost of the independent review organization for conducting the external review.

Source: Laws 2013, LB147, § 16.

44-1317 Health carrier; disclosure; format; contents.

(1)(a) Each health carrier shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage it provides to covered persons.

(b) The disclosure required by subdivision (1)(a) of this section shall be in a format prescribed by the director.

(2) The description required under subsection (1) of this section shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination with the director. The statement may explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the director.

(3) In addition to the contents required by subsection (2) of this section, the statement shall inform the covered person that, when filing a request for an external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

Source: Laws 2013, LB147, § 17.

44-1318 Applicability of act.

The Health Carrier External Review Act applies to any claim submitted on and after January 1, 2014.

Source: Laws 2013, LB147, § 18.

ARTICLE 15

UNFAIR PRACTICES

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

Section

44-1540. Unfair claims settlement practice; acts and practices prohibited.

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

44-1540 Unfair claims settlement practice; acts and practices prohibited.

Any of the following acts or practices by an insurer, if committed in violation of section 44-1539, shall be an unfair claims settlement practice:

(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of property and casualty claims (a) in which coverage and the amount of the loss are reasonably clear and (b) for loss of tangible personal property within real property which is insured by a policy subject to section 44-501.02 and which is wholly destroyed by fire, tornado, windstorm, lightning, or explosion;

(6) Compelling insureds or beneficiaries to institute litigation to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in litigation brought by them;

(7) Refusing to pay claims without conducting a reasonable investigation;

(8) Failing to affirm or deny coverage of a claim within a reasonable time after having completed its investigation related to such claim;

(9) Attempting to settle a claim for less than the amount to which a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;

(10) Attempting to settle claims on the basis of an application which was materially altered without notice to or knowledge or consent of the insured;

(11) Making a claims payment to an insured or beneficiary without indicating the coverage under which each payment is being made;

(12) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof-of-loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof-of-loss form;

(13) Failing, in the case of the denial of a claim or the offer of a compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action;

(14) Failing to provide forms necessary to present claims with reasonable explanations regarding their use within fifteen working days of a request;

(15) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or affiliated with the insurer are performed in a skillful manner. For purposes of this subdivision, a repairer is affiliated with the insurer if there is a preexisting arrangement, understanding, agreement, or contract between the insurer and repairer for services in connection with claims on policies issued by the insurer;

(16) Requiring the insured or claimant to use a particular company or location for motor vehicle repair. Nothing in this subdivision shall prohibit an insurer from entering into discount agreements with companies and locations for motor vehicle repair or otherwise entering into any business arrangements or affiliations which reduce the cost of motor vehicle repair if the insured or claimant has the right to use a particular company or reasonably available location for motor vehicle repair. If the insured or claimant chooses to use a particular company or location other than the one providing the lowest estimate for like kind and quality motor vehicle repair, the insurer shall not be liable for any cost exceeding the lowest estimate. For purposes of this subdivision, motor vehicle repair shall include motor vehicle glass replacement and motor vehicle glass repair;

(17) Failing to provide coverage information or coordinate benefits pursuant to section 68-928; and

(18) Failing to pay interest on any proceeds due on a life insurance policy as required by section 44-3,143.

Source: Laws 1991, LB 234, § 22; Laws 1992, LB 1006, § 16; Laws 1994, LB 978, § 24; Laws 1997, LB 543, § 1; Laws 2002, LB 58, § 1; Laws 2005, LB 589, § 9; Laws 2006, LB 1248, § 59; Laws 2011, LB72, § 5.

ARTICLE 21

HOLDING COMPANIES

Section

- 44-2120. Act, how cited.
- 44-2121. Terms, defined.
- 44-2126. Acquisition of control of or merger with domestic insurer; notice of proposed divestiture; filing requirements; director; powers.
- 44-2127. Merger; acquisition; approval by director; hearings; experts.
- 44-2128. Merger; acquisition; exempt transactions.
- 44-2129. Acquisition; divestiture; merger; prohibited acts.
- 44-2132. Registration of insurers; filings required.
- 44-2133. Transactions within an insurance holding company system; standards.
- 44-2135. Management of domestic insurer.
- 44-2137. Examination by director; director; powers; penalty.
- 44-2137.01. Director; participate in supervisory college; powers; insurer; payment of expenses.
- 44-2138. Information; confidential treatment; sharing of information; restrictions.
- 44-2139. Director; rules and regulations.
- 44-2147.01. Violations; effect.

44-2120 Act, how cited.

Sections 44-2120 to 44-2153 shall be known and may be cited as the Insurance Holding Company System Act.

Source: Laws 1991, LB 236, § 1; Laws 2012, LB887, § 3.

44-2121 Terms, defined.

For purposes of the Insurance Holding Company System Act:

(1) An affiliate of, or person affiliated with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Control, including controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific

findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) Director means the Director of Insurance;

(4) Enterprise risk means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 44-6011 or would cause the insurer to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition;

(5) An insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer;

(6) Insurer has the same meaning as in section 44-103, except that insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(7) Person means an individual, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of such entities acting in concert but does not include any joint-venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property;

(8) Security holder of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(9) Subsidiary of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(10) Voting security includes any security convertible into or evidencing a right to acquire a voting security.

Source: Laws 1991, LB 236, § 2; Laws 2001, LB 360, § 13; Laws 2012, LB887, § 4.

44-2126 Acquisition of control of or merger with domestic insurer; notice of proposed divestiture; filing requirements; director; powers.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the director and has sent to such insurer, a statement containing the information required by this section and such offer, request,

invitation, agreement, or acquisition has been approved by the director in the manner prescribed in section 44-2127.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest his, her, or its controlling interest in the domestic insurer, in any manner, shall file with the director, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The director shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the director, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subsection (1) of this section is otherwise filed, this subsection shall not apply.

(3) For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless such person as determined by the director is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, person does not include any securities broker holding, in the usual and customary brokers function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(4) The statement required to be filed with the director under subsection (1) of this section shall be made under oath and shall contain the following:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected and either:

(i) If such person is an individual, his or her principal occupation, all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof have been in existence, an informative description of the business intended to be done by such person and such person's subsidiaries, and a list of all individuals who are or who have been selected to become directors of executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subdivision (i) of this subdivision;

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, except that when a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof have been in existence and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was arrived at;

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section and, if distributed, of additional soliciting material relating thereto;

(k) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) An agreement by the person required to file the statement referred to in subsection (1) of this section that he, she, or it will provide the annual report specified in subsection (12) of section 44-2132 for as long as control exists;

(m) An acknowledgment by the person required to file the statement referred to in subsection (1) of this section that the person and all subsidiaries within his, her, or its control in the insurance holding company system will provide information to the director upon request as necessary to evaluate enterprise risk to the insurer; and

(n) Such additional information as the director may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(5) If the person required to file the statement is a partnership, limited partnership, syndicate, or other group, the director may require that the information called for by subsection (4) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement is a corporation, the director may require that the information called for by subsection (4) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

(6) If any material change occurs in the facts set forth in the statement filed with the director and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the director and sent to such insurer within two business days after the person learns of such change.

(7) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement may utilize such documents in furnishing the information called for by the statement.

Source: Laws 1991, LB 236, § 7; Laws 2012, LB887, § 5.

44-2127 Merger; acquisition; approval by director; hearings; experts.

(1) The director shall approve any merger or other acquisition of control referred to in subsection (1) of section 44-2126 unless, after a public hearing thereon, he or she finds that:

(a) After the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure of management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control;

(f) To the extent required under section 44-6115, an acquisition has not been approved by the director; or

(g) The acquisition is likely to be hazardous or prejudicial to the public.

(2) Except as provided in subsection (3) of this section, the public hearing referred to in subsection (1) of this section shall be held within thirty days after the statement required by subsection (1) of section 44-2126 is filed, and at least twenty days' notice thereof shall be given by the director to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the director. The director shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one director or commissioner of insurance, the public hearing required by this section may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of section 44-2126. Such person shall file the statement with the National Association of Insurance Commissioners within five days after making the request for a public hearing. A director or commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt out within ten days after the receipt of the statement. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the directors or commissioners of the states in which the insurers are domiciled. Such directors or commissioners shall hear and receive evidence. A director or commissioner may attend such hearing in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the director that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws, rules, and regulations of this state shall be made not later than sixty days after the date of the director's determination. The director may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as may be reasonably necessary to assist the director in reviewing the proposed acquisition of control.

Source: Laws 1991, LB 236, § 8; Laws 1997, LB 52, § 3; Laws 2002, LB 1139, § 22; Laws 2012, LB887, § 6.

44-2128 Merger; acquisition; exempt transactions.

Section 44-2126 shall not apply to:

(1) Any transaction which is subject to the provisions of the Nebraska Model Business Corporation Act and sections 44-224.01 to 44-224.10, except as otherwise provided in Chapter 44, dealing with the merger or consolidation of two or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the director by order shall exempt therefrom as (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or (b) otherwise not comprehended within the purposes of section 44-2126.

Source: Laws 1991, LB 236, § 9; Laws 1995, LB 109, § 221; Laws 2014, LB749, § 287.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

44-2129 Acquisition; divestiture; merger; prohibited acts.

(1) It shall be a violation of section 44-2126 to fail to file any statement, amendment, or other material required to be filed under such section.

(2) It shall be a violation of section 44-2127 to effectuate or attempt to effectuate an acquisition of control of, divestiture of, or merger with a domestic insurer unless the director has given his or her approval thereto.

Source: Laws 1991, LB 236, § 10; Laws 2012, LB887, § 7.

44-2132 Registration of insurers; filings required.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement with the director on a form and in a format prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the director, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the director with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

(f) Statements that show that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(g) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director; and

(h) Any other information required by rules and regulations which the director may adopt and promulgate.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to

shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the director, within thirty days after receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. If the disclaimer is disallowed, the disclaiming party may request and shall be entitled to an administrative hearing. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the director or if the disclaimer is deemed to have been approved.

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state director or commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(13) The failure to file a registration statement or any summary of the registration statement thereto or enterprise risk report required by this section within the time specified for such filing shall be a violation of this section.

Source: Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11; Laws 2012, LB887, § 8.

44-2133 Transactions within an insurance holding company system; standards.

(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost-sharing services and management shall include such provisions as are required by rules and regulations which the director may adopt and promulgate;

(c) Charges or fees for services performed shall be reasonable;

(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(f) The insurer's policyholders surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section which are subject to any materiality standards contained in subdivisions (2)(a) through (e) of this section, shall not be entered into unless the insurer has notified the director in writing of its intention to enter into such transaction at least thirty days prior thereto or such shorter period as the director may permit and the director has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty days after a termination of a previously filed agreement, to the director for determination of the type of filing required, if any:

(a) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, when the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making such loans or extensions of credit if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto, including (i) all reinsurance pooling agreements and (ii) agreements in which the reinsurance premi-

um or a change in the insurer's liabilities or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years equals or exceeds five percent of the insurer's policyholders surplus as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, tax-allocation agreements, and cost-sharing arrangements; and

(e) Any material transactions, specified by rule and regulation, which the director determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director determines that such separate transactions were entered into over any twelve-month period for such purpose, the director may exercise his or her authority under sections 44-2143 to 44-2147.

(4) The director, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The director shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation's voting securities.

Source: Laws 1991, LB 236, § 13; Laws 2012, LB887, § 9.

44-2135 Management of domestic insurer.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the Insurance Holding Company System Act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (1) of section 44-2133.

(3) Not less than one-third of the directors of a domestic insurer which is a member of an insurance holding company system shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by, or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors.

(4) Subsection (3) of this section shall not apply to a domestic insurer if the person controlling such insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors that meets the requirements of such subsection with respect to such controlling entity.

(5) An insurer may make application to the director for a waiver from the requirements of this section if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program as defined in section 31-1014, is less than three hundred million dollars. An insurer may also make application to the director for a waiver from the requirements of this section based upon unique circumstances. The director may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or ownership or organizational structure of the entity.

Source: Laws 1991, LB 236, § 15; Laws 2012, LB887, § 10.

44-2137 Examination by director; director; powers; penalty.

(1)(a) Subject to the limitation contained in this section and in addition to the powers which the director has under the Insurers Examination Act relating to the examination of insurers, the director may examine any insurer registered under section 44-2132 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) The director may order any insurer registered under section 44-2132 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with Chapter 44.

(c) To determine compliance with Chapter 44, the director may order any insurer registered under section 44-2132 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or another method. If the insurer cannot obtain the information requested by the director, the insurer shall provide the director a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. If it appears to the director that the detailed explanation is without merit, the director may require, after notice and hearing, the insurer to pay a penalty of one hundred dollars for each day's delay, not to exceed an aggregate penalty of ten thousand dollars, or may suspend or revoke the insurer's certificate of authority.

(2) The director may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as shall be reasonably necessary to assist in the conduct of the examination under this section. Any persons so retained shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to this section shall be liable for and shall pay the expense of such examination in accordance with the Insurers Examination Act.

(4) If the insurer fails to comply with an order, the director may examine the affiliates to obtain the information. The director may also issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable by contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, which fees, mileage, and actual expenses, if any, necessarily incurred in securing the attendance of witnesses and their testimony, shall be itemized, charged against, and paid by the entity being examined.

Source: Laws 1991, LB 236, § 17; Laws 1993, LB 583, § 85; Laws 2012, LB887, § 11.

Cross References

Insurers Examination Act, see section 44-5901.

44-2137.01 Director; participate in supervisory college; powers; insurer; payment of expenses.

(1) With respect to any insurer registered under section 44-2132 and in accordance with subsection (3) of this section, the director may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance with Chapter 44 by the insurer. The powers of the director with respect to supervisory colleges include, but are not limited to, the following:

- (a) Initiating the establishment of a supervisory college;
- (b) Clarifying the membership and participation of other supervisors in the supervisory college;
- (c) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (d) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
- (e) Establishing a crisis management plan.

(2) Each insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in a supervisory college in accordance with subsection (3) of this section, including reasonable travel expenses.

(3) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with section 44-2137, the director may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The director may enter into agreements in accordance with section 44-2138 providing the basis for cooperation between the director and the other regulatory agencies and the activities of the supervisory college.

(4) For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the director may establish a regular assessment to the insurer for the payment of such expenses.

(5) Nothing in this section shall delegate to the supervisory college the authority of the director to regulate or supervise the insurer or its affiliates within its jurisdiction.

Source: Laws 2012, LB887, § 12.

44-2138 Information; confidential treatment; sharing of information; restrictions.

(1) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported pursuant to sections 44-2132 to 44-2136 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(2) The director may receive information, documents, and copies of information and documents disclosed to other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to an examination of an insurance holding company system. The director shall maintain information, documents, and copies of information and documents received pursuant to this subsection as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

(3) In order to assist in the performance of the director's duties, the director may share information with state, federal, and international regulatory agencies, the National Association of Insurance Commissioners and its affiliates and

subsidiaries, state, federal, and international law enforcement authorities, including members of any supervisory college described in section 44-2137.01, the International Association of Insurance Supervisors, and the Bank for International Settlements under the conditions set forth in section 44-154 if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality. The director may only share confidential and privileged documents, material, or information reported pursuant to subsection (12) of section 44-2132 with directors or commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information.

(4) The director shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this section that shall:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the association with other state, federal, or international regulators;

(b) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section remains with the director and the association's use of the information is subject to the direction of the director;

(c) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this section is subject to a request or subpoena to the association for disclosure or production; and

(d) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the association and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the association and its affiliates and subsidiaries pursuant to this section.

(5) The sharing of information by the director pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of this section.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized by this section.

(7) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this section shall be confidential and privileged, shall not be subject to public disclosure under section 84-712, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

Source: Laws 1991, LB 236, § 18; Laws 2001, LB 52, § 47; Laws 2012, LB887, § 13.

44-2139 Director; rules and regulations.

The director may adopt and promulgate such rules and regulations and issue such orders as necessary to carry out the Insurance Holding Company System Act.

Source: Laws 1991, LB 236, § 19; Laws 2012, LB887, § 14.

44-2147.01 Violations; effect.

If it appears to the director that any person has committed a violation of sections 44-2126 to 44-2130 which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Source: Laws 2012, LB887, § 15.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

ARTICLE 27**NEBRASKA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT**

Section

- 44-2702. Terms, defined.
 44-2703. Coverages authorized.
 44-2704. Act; how construed.
 44-2719.02. Insurer under court order; provisions applicable; act; applicability.

44-2702 Terms, defined.

As used in the Nebraska Life and Health Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account means any of the three accounts created pursuant to section 44-2705;

(2) Association means the Nebraska Life and Health Insurance Guaranty Association created by section 44-2705;

(3) Authorized, when used in the context of assessments, or authorized assessment means a resolution by the board of directors has passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(4) Called, when used in the context of assessments, or called assessment means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers;

(5) Director means the Director of Insurance;

(6) Contractual obligation means any obligation under a policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(7) Covered policy means any policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(8) Impaired insurer means a member insurer which, after August 24, 1975, (a) is deemed by the director to be potentially unable to fulfill its contractual obligations and is not an insolvent insurer or (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(9) Insolvent insurer means a member insurer which after August 24, 1975, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(10) Member insurer means any person authorized to transact in this state any kind of insurance provided for under section 44-2703. Member insurer includes any person whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include:

(a) A nonprofit hospital or medical service organization;

(b) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(c) A fraternal benefit society;

(d) A mandatory state pooling plan;

(e) An unincorporated mutual association;

(f) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;

(g) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

(h) A viatical settlement provider, a viatical settlement broker, or a financing entity under the Viatical Settlements Act; or

(i) An entity similar to any entity listed in subdivisions (10)(a) through (h) of this section;

(11) Moody's corporate bond yield average means the monthly average of corporate bond yields published by Moody's Investment Service, Incorporated, or any successor to Moody's Investment Service, Incorporated;

(12) Owner of a policy or contract, policy owner, and contract owner means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. Owner, policy owner, and contract owner does not include persons with a mere beneficial interest in a policy or contract;

(13) Person means any individual, corporation, partnership, limited liability company, association, or voluntary organization;

(14) Premiums means amounts or considerations received on covered policies or contracts less returned premiums, considerations, and deposits, less dividends and experience credits. Premiums does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection (2) of section 44-2703, except that assessable premiums shall not be reduced on account of subdivision (2)(b)(iii) of section 44-2703 relating to interest limitations and

subdivision (3)(b) of section 44-2703 relating to limitations with respect to one individual, one participant, and one contract owner. Premiums does not include:

(a) Premiums on an unallocated annuity contract; or

(b) With respect to multiple nongroup life insurance policies owned by one owner, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, premiums exceeding five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(15)(a) Principal place of business of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function. The association shall determine the principal place of business considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors or similar governing person or persons of the entity conducts the majority of meetings;

(iv) The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in subdivisions (15)(a)(i) through (v) of this section, except that in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

(16) Receivership court means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;

(17) Resident means any person to whom a contractual obligation is owed who resides in this state at the date of entry of a court order that determines that a member insurer is an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one state. A person other than a natural person shall be a resident of its principal place of business. Citizens of the United States that are residents of foreign countries, or are residents of a

United States possession that does not have an association similar to the association created by the Nebraska Life and Health Insurance Guaranty Association Act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(18) State means a state, the District of Columbia, Puerto Rico, and any United States possession, territory, or protectorate;

(19) Structured settlement annuity means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

(20) Supplemental contract means any agreement entered into between a member insurer and an owner or beneficiary for the distribution of policy or contract proceeds under a covered policy or contract; and

(21) Unallocated annuity contract means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Source: Laws 1975, LB 217, § 2; Laws 1986, LB 593, § 4; Laws 1993, LB 121, § 244; Laws 2001, LB 360, § 14; Laws 2012, LB887, § 16.

Cross References

Viatical Settlements Act, see section 44-1101.

44-2703 Coverages authorized.

(1)(a) The Nebraska Life and Health Insurance Guaranty Association Act shall provide coverage for the policies and contracts specified in subsection (2) of this section:

(i) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (1)(a)(ii) of this section; and

(ii) To persons who are owners of or certificate holders under the policies or contracts, other than structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents and all of the following conditions apply:

(I) The insurer that issued the policies or contracts is domiciled in this state;

(II) The states in which the persons reside have associations similar to the association created by the act; and

(III) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(b) For structured settlement annuities specified in subsection (2) of this section, subdivisions (1)(a)(i) and (ii) of this section do not apply. The act shall, except as provided in subdivisions (1)(c) and (d) of this section, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides; or

(ii) Is not a resident, but only under the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident;
or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by the act; and

(B) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(c) The act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(d) The act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under the act is provided coverage under the laws of any other state, the person shall not be provided coverage under the act. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, the act shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) The act shall provide coverage to the persons specified in subsection (1) of this section for direct nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these and for certificates under direct group policies and contracts, except as limited by the act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

(b) The act shall not apply to:

(i) Any portion of any policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as described in 29 U.S.C. 1002(40);

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) A portion of a policy or contract to the extent that the assessments required by section 44-2708 with respect to the policy or contract are preempted by federal or state law;

(viii) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form, filing, or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(ix) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(x) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be

credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(xi) An unallocated annuity contract, a funding agreement, a guaranteed interest contract, a guaranteed investment contract, a synthetic guaranteed investment contract, or a deposit administration contract;

(xii) Any such policy or contract issued by:

(A) A nonprofit hospital or medical service organization;

(B) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(C) A fraternal benefit society;

(D) A mandatory state pooling plan;

(E) An unincorporated mutual association;

(F) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(G) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

(xiii) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44;

(xiv) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Title 42, Chapter 7, Subchapter XVIII, Part C or D of the United States Code or any regulations issued pursuant thereto; or

(xv) A viatical settlement contract as defined in section 44-1102 or a viatical policy as defined in section 44-1102.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In health insurance benefits: (I) Five hundred thousand dollars for basic hospital, medical, or surgical insurance or major medical insurance. For purposes of this subdivision: Basic hospital, medical, or surgical insurance means a policy which pays a certain portion of hospital room and board costs each day. This type of policy also pays for hospital services and supplies including X-rays, lab tests, medicine, and other items up to a stated amount; and major medical insurance means health insurance to finance the expense of major illness and injury characterized by large benefit maximums and reimburses the major part of all charges for hospitals, doctors, private nurses, medical appliances, prescribed out-of-hospital treatment, drugs, and medicines above an initial deductible; (II) three hundred thousand dollars for disability insurance or long-term care insurance as defined in section 44-4509. For

purposes of this subdivision, disability insurance means the type of policy which pays a monthly or weekly amount if an individual is disabled and cannot work; and (III) one hundred thousand dollars for coverages not defined as disability insurance, long-term care insurance, basic hospital, medical, or surgical insurance, or major medical insurance, including any net cash surrender and net cash withdrawal values; or

(C) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, two hundred fifty thousand dollars in the present value of annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iii) The association shall not be obligated to cover more than:

(A) An aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivisions (3)(b)(i) and (ii) of this section, except that with respect to benefits for basic hospital, medical, or surgical insurance and major medical insurance under subdivision (3)(b)(i)(B)(I) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or

(B) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits regardless of the number of policies and contracts held by the owner;

(iv) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under the act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Source: Laws 1975, LB 217, § 3; Laws 1986, LB 593, § 5; Laws 2001, LB 360, § 15; Laws 2004, LB 1047, § 8; Laws 2012, LB887, § 17.

44-2704 Act; how construed.

The Nebraska Life and Health Insurance Guaranty Association Act shall be construed to effect the purposes enumerated in section 44-2701.

Source: Laws 1975, LB 217, § 4; Laws 1986, LB 593, § 6; Laws 2012, LB887, § 18.

44-2719.02 Insurer under court order; provisions applicable; act; applicability.

(1) Any insurer under an order of liquidation, rehabilitation, or conservation on February 12, 1986, shall be subject to the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the day prior to February 12, 1986.

(2) Notwithstanding any other provision of law, the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the date the association first becomes obligated for the policies or contracts of an insolvent or impaired member govern the association's rights or obligations to the policyowners of the insolvent or impaired member insurer.

Source: Laws 1986, LB 593, § 15; Laws 2012, LB887, § 19.

ARTICLE 28

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Section

44-2825. Action for injury or death; maximum amount recoverable; settlement; manner.

44-2825 Action for injury or death; maximum amount recoverable; settlement; manner.

(1) The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed (a) five hundred thousand dollars for any occurrence on or before December 31, 1984, (b) one million dollars for any occurrence after December 31, 1984, and on or before December 31, 1992, (c) one million two hundred fifty thousand dollars for any occurrence after December 31, 1992, and on or before December 31, 2003, (d) one million seven hundred fifty thousand dollars for any occurrence after December 31, 2003, and on or before December 31, 2014, and (e) two million two hundred fifty thousand dollars for any occurrence after December 31, 2014.

(2) A health care provider qualified under the act shall not be liable to any patient or his or her representative who is covered by the act for an amount in excess of five hundred thousand dollars for all claims or causes of action arising from any occurrence during the period that the act is effective with reference to such patient.

(3) Subject to the overall limits from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

Source: Laws 1976, LB 434, § 25; Laws 1984, LB 692, § 8; Laws 1986, LB 1005, § 2; Laws 1992, LB 1006, § 18; Laws 2003, LB 146, § 1; Laws 2004, LB 998, § 2; Laws 2014, LB961, § 3.
Operative date July 18, 2014.

ARTICLE 29

NEBRASKA HOSPITAL AND PHYSICIANS MUTUAL INSURANCE ASSOCIATION ACT

Section

44-2916. Associations; provisions applicable.

44-2916 Associations; provisions applicable.

To the extent applicable and when not in conflict with the Nebraska Hospital and Physicians Mutual Insurance Association Act, the provisions of the Nebraska Model Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to associations incorporated pursuant to the Nebraska Hospital and Physicians Mutual Insurance Association Act.

Source: Laws 1976, LB 809, § 16; Laws 1989, LB 92, § 218; Laws 1995, LB 109, § 222; Laws 2014, LB749, § 288.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 31**NEBRASKA PROFESSIONAL ASSOCIATION
MUTUAL INSURANCE COMPANY ACT**

Section
44-3112. Act; other provisions applicable.

44-3112 Act; other provisions applicable.

To the extent applicable and when not in conflict with the Nebraska Professional Association Mutual Insurance Company Act, the provisions of the Nebraska Model Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to companies incorporated pursuant to the Nebraska Professional Association Mutual Insurance Company Act.

Source: Laws 1978, LB 656, § 12; Laws 1989, LB 92, § 219; Laws 1995, LB 109, § 223; Laws 2014, LB749, § 289.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 32**HEALTH MAINTENANCE ORGANIZATIONS**

Section
44-32,115. Establishment of health maintenance organization; certificate of authority required.
44-32,177. Health maintenance organization; acquisition, merger, and consolidation; procedure.

44-32,115 Establishment of health maintenance organization; certificate of authority required.

Any person may apply to the director for a certificate of authority to establish and operate a health maintenance organization in compliance with the Health Maintenance Organization Act. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under the act. Operating a health maintenance organization without a certificate of authority shall be a violation of the Unauthorized Insurers Act. A

foreign corporation may qualify under the Health Maintenance Organization Act if it registers to do business in this state as a foreign corporation under the Nebraska Model Business Corporation Act and complies with the Health Maintenance Organization Act and other applicable state laws.

Source: Laws 1990, LB 1136, § 24; Laws 1993, LB 583, § 88; Laws 1995, LB 109, § 224; Laws 2014, LB749, § 290.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.
Unauthorized Insurers Act, see section 44-2008.

44-32,177 Health maintenance organization; acquisition, merger, and consolidation; procedure.

No person shall (1) make a tender for or a request or invitation for tenders of, (2) enter into an agreement to exchange securities for, or (3) acquire in the open market or otherwise any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization, and no person shall enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the director and has sent to the health maintenance organization information required by subsection (4) of section 44-2126 and the offer, request, invitation, agreement, or acquisition has been approved by the director. Approval by the director shall be governed by the Insurance Holding Company System Act.

Source: Laws 1990, LB 1136, § 86; Laws 1991, LB 236, § 34; Laws 2012, LB887, § 20.

Cross References

Insurance Holding Company System Act, see section 44-2120.

ARTICLE 33

LEGAL SERVICE INSURANCE CORPORATIONS

Section
44-3312. Legal service insurance corporation; articles of incorporation; contents.

44-3312 Legal service insurance corporation; articles of incorporation; contents.

(1) Two or more persons may organize a legal service insurance corporation under this section.

(2) The articles of incorporation of a not-for-profit corporation shall conform to the requirements applicable to not-for-profit corporations under the Nebraska Nonprofit Corporation Act and the articles of incorporation of a corporation for profit shall conform to the requirements applicable to corporations for profit under the Nebraska Model Business Corporation Act, except that:

(a) The name of the corporation shall indicate that legal services or indemnity for legal services is to be provided;

(b) The purposes of the corporation shall be limited to providing legal services or indemnity for legal expenses and business reasonably related thereto;

(c) The articles shall state whether members or other providers of services may be required to share operating deficits, either through assessments or through reductions in the compensation for services rendered. They shall also state the general conditions and procedures for deficit sharing and any limits on the amount of the deficit to be assumed by each individual member or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Source: Laws 1979, LB 52, § 12; Laws 1995, LB 109, § 225; Laws 1996, LB 681, § 195; Laws 2014, LB749, § 291.
Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 35

SERVICE CONTRACTS

(b) MOTOR VEHICLES

Section

44-3521. Terms, defined.

44-3524. Cease and desist order; notice; hearing; injunction.

44-3526. Act; exemptions.

(b) MOTOR VEHICLES

44-3521 Terms, defined.

For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Incidental costs means expenses specified in a motor vehicle service contract that are incurred by the service contract holder due to the failure of a vehicle protection product to perform as provided in the contract. Incidental costs include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the motor vehicle service contract or sales agreement or by use of a formula itemizing specific incidental costs incurred by the service contract holder;

(3) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and

tear and that is issued by an insurance company authorized to do business in this state;

(4) Motor vehicle means any motor vehicle as defined in section 60-339;

(5)(a) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance.

(b) Motor vehicle service contract also includes a contract or agreement that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle to perform any one or more of the following:

(i) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(ii) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(iii) The repair of chips or cracks in or replacement of motor vehicle windshields as a result of damage caused by road hazards;

(iv) The replacement of a motor vehicle key or keyfob in the event the key or keyfob becomes inoperable or is lost;

(v) The payment of specified incidental costs as the result of a failure of a vehicle protection product to perform as specified; and

(vi) Other products and services approved by the director;

(6) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(7) Motor vehicle service contract reimbursement insurance policy means a policy of insurance meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider;

(8) Road hazards means hazards that are encountered during normal driving conditions, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

(9) Service contract holder means a person who purchases a motor vehicle service contract; and

(10)(a) Vehicle protection product means a vehicle protection device, system, or service that:

(i) Is installed on or applied to a vehicle;

(ii) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(iii) Includes a written warranty.

(b) Vehicle protection product includes, but is not limited to, chemical additives, alarm systems, body part marking products, steering locks, window

etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

Source: Laws 1990, LB 1136, § 93; Laws 2005, LB 274, § 230; Laws 2006, LB 875, § 4; Laws 2012, LB1054, § 1.

44-3524 Cease and desist order; notice; hearing; injunction.

(1) The director may issue an order instructing a motor vehicle service contract provider to cease and desist from selling or offering for sale motor vehicle service contracts if the director determines that the provider has failed to comply with the Motor Vehicle Service Contract Reimbursement Insurance Act. At the same time the order is issued, the director shall serve notice to the motor vehicle service provider of the reasons for such order and that the motor vehicle service provider may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director.

(2) Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the director, the director may give notice in writing of the failure to the Attorney General who may commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the act. The district court may issue the injunction.

Source: Laws 1990, LB 1136, § 96; Laws 2014, LB700, § 15.
Operative date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

44-3526 Act; exemptions.

The Motor Vehicle Service Contract Reimbursement Insurance Act shall not apply to:

(1) Motor vehicle service contracts (a)(i) issued by a motor vehicle manufacturer or importer for the motor vehicles manufactured or imported by that manufacturer or importer and (ii) sold by a franchised motor vehicle dealer licensed pursuant to the Motor Vehicle Industry Regulation Act or (b) issued and sold directly by a motor vehicle manufacturer or importer licensed pursuant to the Motor Vehicle Industry Regulation Act for the motor vehicles manufactured or imported by that manufacturer or importer; or

(2) Product warranties governed by the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., or to any other warranties, indemnity agreement, or guarantees that are not provided incidental to the purchase of a vehicle protection product.

Source: Laws 1990, LB 1136, § 98; Laws 2010, LB816, § 3; Laws 2012, LB1054, § 2.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

ARTICLE 37

MOTOR CLUB SERVICES ACT

Section

44-3719. Director; duties; rules and regulations.

44-3719 Director; duties; rules and regulations.

The director shall administer and enforce the provisions of sections 44-3701 to 44-3721 and may adopt and promulgate rules and regulations in accordance with sections 44-3701 to 44-3721.

Source: Laws 1981, LB 113, § 19; Laws 2014, LB700, § 16.

Operative date July 18, 2014.

ARTICLE 38

DENTAL SERVICES

Section

44-3812. Corporation; articles of incorporation; requirements.

44-3812 Corporation; articles of incorporation; requirements.

(1) Two or more persons may organize a prepaid dental service corporation under this section.

(2) The articles of incorporation of the corporation shall conform to the requirements of the Nebraska Nonprofit Corporation Act or to the requirements of the Nebraska Model Business Corporation Act, except that:

(a) The name of the corporation shall indicate that dental services are to be provided;

(b) The purposes of the corporation shall be limited to providing dental services and business reasonably related thereto;

(c) The articles shall state whether members, shareholders, or providers of services may be required to share operating deficits, either through assessments or through reductions in compensation for services rendered, the general conditions and procedures for deficit sharing, and any limits on the amount of the deficit to be assumed by each individual member, shareholder, or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

Source: Laws 1982, LB 139, § 12; Laws 1995, LB 109, § 226; Laws 1996, LB 681, § 196; Laws 2014, LB749, § 292.

Operative date January 1, 2016.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 42

COMPREHENSIVE HEALTH INSURANCE POOL ACT

Section

- 44-4217. Board; pool administrator; selection.
- 44-4219. Plan of operation; contents.
- 44-4220.02. Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.
- 44-4223. Selection of pool administrator; procedure.
- 44-4224. Pool administrator; duties.
- 44-4225. Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

44-4217 Board; pool administrator; selection.

The director shall select the board. The board shall select a pool administrator pursuant to section 44-4223.

Source: Laws 1985, LB 391, § 17; Laws 1989, LB 279, § 6; Laws 1992, LB 1006, § 31; Laws 2000, LB 1253, § 21; Laws 2011, LB73, § 1.

44-4219 Plan of operation; contents.

In its plan of operation, the board shall:

- (1) Establish procedures for the handling and accounting of assets and funds of the pool;
- (2) Select a pool administrator in accordance with section 44-4223;
- (3) Establish procedures for the selection, replacement, term of office, and qualifications of the directors of the board and rules of procedures for the operation of the board; and
- (4) Develop and implement a program to publicize the existence of the pool, the eligibility requirements, and the procedures for enrollment and to maintain public awareness of the pool.

Source: Laws 1985, LB 391, § 19; Laws 1992, LB 1006, § 33; Laws 2000, LB 1253, § 22; Laws 2011, LB73, § 2.

44-4220.02 Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.

(1)(a) In addition to the requirements of section 44-4220.01, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the pool administrator to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the pool administrator which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the pool administrator and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the pool administrator to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage.

(3) Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

Source: Laws 2009, LB358, § 3; Laws 2011, LB73, § 3.

44-4223 Selection of pool administrator; procedure.

(1) The board shall select a pool administrator through a competitive bidding process to administer the pool. The pool administrator may be an insurer or a third-party administrator authorized to transact business in this state. The board shall evaluate bids submitted on the basis of criteria established by the board which shall include:

(a) The applicant’s proven ability to handle individual sickness and accident insurance;

(b) The efficiency of the applicant’s claim-paying procedures;

(c) The applicant’s estimate of total charges for administering the pool;

(d) The applicant’s ability to administer the pool in a cost-effective manner; and

(e) The applicant’s ability to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services.

(2) The pool administrator shall serve for a period of three years subject to removal for cause. At least one year prior to the expiration of each three-year period of service by a pool administrator, the board shall invite all insurers and third-party administrators authorized to transact business in this state, including the current pool administrator, to submit bids to serve as the pool administrator for the succeeding three-year period. Selection of the pool administrator for the succeeding period shall be made at least six months prior to the end of the current three-year period.

Source: Laws 1985, LB 391, § 23; Laws 1992, LB 1006, § 37; Laws 2011, LB73, § 4.

44-4224 Pool administrator; duties.

The pool administrator shall:

(1) Perform all eligibility verification functions relating to the pool;

(2) Establish a premium billing procedure for collection of premiums from covered individuals on a periodic basis as determined by the board;

(3) Perform all necessary functions to assure timely payment of benefits to covered individuals, including:

(a) Making available information relating to the proper manner of submitting a claim for benefits to the pool and distributing forms upon which submission shall be made; and

(b) Evaluating the eligibility of each claim for payment by the pool;

(4) Submit regular reports to the board regarding the operation of the pool. The frequency, content, and form of the reports shall be determined by the board;

(5) Following the close of each calendar year, report such income and expense items as directed by the board to the board and the department on a form prescribed by the director; and

(6) Be paid as provided in the plan of operation for its expenses incurred in the performance of its services to the pool.

Source: Laws 1985, LB 391, § 24; Laws 2000, LB 1253, § 26; Laws 2011, LB73, § 5.

44-4225 Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

(1) Following the close of each calendar year, the board shall report the board’s determination of the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses. The board shall distribute copies of the report to the director, the Governor, and each

member of the Legislature. The report submitted to each member of the Legislature shall be submitted electronically.

(2) The Comprehensive Health Insurance Pool Distributive Fund is created. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, any premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the operation of and payment of claims made against the pool. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) The board shall make periodic estimates of the amount needed from the fund for payment of losses resulting from claims, including a reasonable reserve, and administrative, organizational, and interim operating expenses and shall notify the director of the amount needed and the justification of the board for the request.

(4) The director shall approve all withdrawals from the fund and may determine when and in what amount any additional withdrawals may be necessary from the fund to assure the continuing financial stability of the pool.

(5) No later than May 1, 2002, and each May 1 thereafter, after funding of the net loss from operation of the pool for the prior premium and related retaliatory tax year, taking into account the policyholder premiums, account investment income, claims, costs of operation, and other appropriate gains and losses, the director shall transmit any money remaining in the fund as directed by section 77-912, disregarding the provisions of subdivisions (1) through (3) of such section. Interest earned on money in the fund shall be credited proportionately in the same manner as premium and related retaliatory taxes set forth in section 77-912.

Source: Laws 1985, LB 391, § 25; Laws 1991, LB 419, § 3; Laws 1992, LB 1006, § 38; Laws 2000, LB 1253, § 27; Laws 2011, LB73, § 6; Laws 2012, LB782, § 54.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 48

INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section

- 44-4803. Terms, defined.
- 44-4805. Injunctions and orders.
- 44-4815. Actions; effect of rehabilitation.
- 44-4821. Powers of liquidator.
- 44-4826. Fraudulent transfers and obligations incurred prior to petition.
- 44-4827. Fraudulent transfer after petition.
- 44-4828. Preferences and liens.
- 44-4830.01. Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.
- 44-4862. Act, how cited.

44-4803 Terms, defined.

For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

- (1) Ancillary state means any state other than a domiciliary state;
- (2) Creditor means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;
- (3) Delinquency proceeding means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under section 44-4809 or 44-4810;
- (4) Department means the Department of Insurance;
- (5) Director means the Director of Insurance;
- (6) Doing business includes any of the following acts, whether effected by mail or otherwise:
 - (a) The issuance or delivery of contracts of insurance to persons who are residents of this state;
 - (b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;
 - (c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;
 - (d) The transaction of matters subsequent to execution of such contracts and arising out of them; or
 - (e) Operating as an insurer under a license or certificate of authority issued by the department;
- (7) Domiciliary state means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;
- (8) Fair consideration is given for property or an obligation:
 - (a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or
 - (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained;
- (9) Foreign country means any other jurisdiction not in any state;
- (10) Foreign guaranty association means a guaranty association now in existence in or hereafter created by the legislature of another state;
- (11) Formal delinquency proceeding means any liquidation or rehabilitation proceeding;
- (12) General assets means all property, real, personal, or otherwise not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all

insureds or all insureds and creditors, in more than a single state, are treated as general assets;

(13) Guaranty association means the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent means:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities includes, but is not limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto;

(15) Insurer means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or the director, commissioner, or equivalent official of another state. Any other persons included under section 44-4802 are deemed to be insurers;

(16) Netting agreement means an agreement and any terms and conditions incorporated by reference therein, including a master agreement that, together with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement:

(a) That documents one or more transactions between parties to the agreement for or involving one or more qualified financial contracts; and

(b) That provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement;

(17) Person includes any individual, corporation, partnership, limited liability company, association, trust, or other entity;

(18) Qualified financial contract means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the director determines by rule and regulation, resolution, or order to be a qualified financial contract for the purposes of the act;

(19) Receiver means receiver, liquidator, rehabilitator, or conservator as the context requires;

(20) Reciprocal state means any state other than this state in which in substance and effect sections 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in which provisions are in force requiring that the director, commissioner, or equivalent official of such state be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(21) Secured claim means any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but does not include a special deposit claim or a claim against general assets. The term includes claims which have become liens upon specific assets by reason of judicial process;

(22) Special deposit claim means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but does not include any claim secured by general assets;

(23) State means any state, district, or territory of the United States and the Panama Canal Zone; and

(24) Transfer includes the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally, voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor is deemed a transfer suffered by the debtor.

Source: Laws 1989, LB 319, § 3; Laws 1990, LB 984, § 4; Laws 1991, LB 236, § 60; Laws 1993, LB 121, § 258; Laws 2011, LB72, § 6.

Cross References

Nebraska Life and Health Insurance Guaranty Association, see section 44-2705.

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

44-4805 Injunctions and orders.

(1) Except as provided in subsection (3) of this section, any receiver appointed in a proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may at any time apply for, and the court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (a) The transaction of further business;
- (b) The transfer of property;
- (c) Interference with the receiver or with a proceeding under the act;
- (d) Waste of the insurer's assets;
- (e) Dissipation and transfer of bank accounts;
- (f) The institution or further prosecution of any actions or proceedings;
- (g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its insureds;
- (h) The levying of execution against the insurer, its assets, or its insureds;
- (i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of insureds, creditors, or shareholders or the administration of any proceeding under the act.

(2) Except as provided in subsection (3) of this section, the receiver may apply to any court outside of the state for the relief described in subsection (1) of this section.

(3) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

Source: Laws 1989, LB 319, § 5; Laws 1991, LB 236, § 62; Laws 2013, LB337, § 1.

44-4815 Actions; effect of rehabilitation.

(1) Except as provided in subsection (4) of this section, any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of insureds, creditors, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

(4) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

Source: Laws 1989, LB 319, § 15; Laws 1991, LB 236, § 70; Laws 2013, LB337, § 2.

44-4821 Powers of liquidator.

(1) The liquidator shall have the power:

(a) To appoint a special deputy to act for him or her under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and to determine his or her reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;

(b) To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she may deem necessary to assist in the liquidation;

(c) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in liquidation proceedings conducted under the act;

(d) To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(e) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

(f) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths and affirmations, to examine any person under oath or affirmation, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he or she deems relevant to the inquiry;

(g) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(h) To collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he or she deems best; and

(iii) To pursue any creditor's remedies available to enforce his or her claims;

(i) To conduct public and private sales of the property of the insurer;

(j) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under section 44-4842;

(k) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all

deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(l) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and shall have priority over any other claims under subdivision (1) of section 44-4842;

(m) To enter into such contracts as are necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(n) To continue to prosecute and to institute in the name of the insurer or in his or her own name any and all suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 44-4820, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

(o) To prosecute any action which may exist on behalf of the insureds, creditors, members, or shareholders of the insurer against any officer of the insurer or any other person;

(p) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

(q) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(r) To invest all sums not currently needed unless the court orders otherwise;

(s) To file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;

(t) To assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(u) To exercise and enforce all the rights, remedies, and powers of any insured, creditor, shareholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 44-4826 to 44-4828, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(v) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered;

(w) To enter into agreements with any receiver or the director, commissioner, or equivalent official of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and

(x) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of the act.

(2)(a) If a company placed in liquidation has issued liability policies on a claims-made basis, which policies provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated in this subsection. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(3) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her nor shall it exclude in any manner his or her right to do such other acts not in this section specifically enumerated or otherwise provided for as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(4) Notwithstanding the powers of the liquidator as stated in subsections (1) and (2) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

Source: Laws 1989, LB 319, § 21; Laws 1991, LB 236, § 75; Laws 2013, LB337, § 3.

44-4826 Fraudulent transfers and obligations incurred prior to petition.

(1) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. Except as provided in subsection (5) of this section, a transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under the act which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair

equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of section 44-4828.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Except as provided in subsection (5) of this section, any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

Source: Laws 1989, LB 319, § 26; Laws 1991, LB 236, § 78; Laws 2013, LB337, § 4.

44-4827 Fraudulent transfer after petition.

(1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or,

if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his or her order with the same effect as if the petition were not pending;

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be liable therefor and shall be bound to account to the liquidator.

(4) Nothing in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall impair the negotiability of currency or negotiable instruments.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

Source: Laws 1989, LB 319, § 27; Laws 1991, LB 236, § 79; Laws 2013, LB337, § 5.

44-4828 Preferences and liens.

(1)(a) A preference shall mean a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act the effect of which transfer may be to enable the

creditor to obtain a greater percentage of such debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Except as provided in subdivision (1)(d) of this section, any preference may be avoided by the liquidator if:

(i) The insurer was insolvent at the time of the transfer;

(ii) The transfer was made within four months before the filing of the petition;

(iii) The creditor receiving it or to be benefited thereby or his or her agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) The creditor receiving it was: An officer; any employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position; any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer; or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except when a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(d) A liquidator or receiver shall not avoid any preference arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3)(a) A lien obtainable by legal or equitable proceedings upon a simple contract shall be one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It shall not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting shall not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien deemed voidable under subdivision (1)(b) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under the act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed voidable under subsections (1) and (5) of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court of Lancaster County shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or

lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(8) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (7) of this section, to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him or her.

(10) If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under the act or at any time in contemplation of a proceeding to liquidate, pays money or transfers property to an attorney for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, except that if the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by subdivision (1)(b)(iv) of this section.

(11)(a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It shall be permissible to infer that there is a reasonable cause to so believe if the transfer was made within four months before the date of filing of the successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

Source: Laws 1989, LB 319, § 28; Laws 1995, LB 616, § 2; Laws 2013, LB337, § 6.

44-4830.01 Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.

(1) Notwithstanding any other provision of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to the contrary, including any other provision of the act that permits the modification of contracts, or another law of this state, a person shall not be stayed or prohibited from exercising any of the following:

(a) A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of one of the following:

(i) The insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than the act; or

(ii) The commencement of a formal delinquency proceeding under the act;

(b) Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; or

(c) Subject to any provision of subsection (2) of section 44-4830, any right to setoff or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract if the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(2) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under the act shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement or qualified financial contract that may provide that the defaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount, except to the extent it is subject to one or more secondary liens or encumbrances, shall be a general asset of the insurer.

(3) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under the act, the receiver shall do one of the following:

(a) Transfer to one party, other than an insurer subject to a proceeding under the act, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(i) All rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract; or

(b) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (a) of this subsection with respect to the counterparty and any affiliate of the counterparty.

(4) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use his or her best efforts to notify any person who is party to the netting agreement or qualified financial contract of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, business day means a day other than a Saturday, Sunday, or any day on which

either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(5) Notwithstanding any other provision of the act to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under the act. However, a transfer may be avoided under section 44-4828 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or an existing or future creditor.

(6)(a) In exercising any of its powers under the act to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith in its entirety.

(b) Notwithstanding any other provision of the act to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. For purposes of this subdivision, actual direct compensatory damages does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(7) For purposes of this section, contractual right includes any right, whether or not evidenced in writing, arising under (a) statutory or common law, (b) a rule or bylaw of a national securities exchange, a national securities clearing organization, or a securities clearing agency, (c) a rule or bylaw or a resolution of the governing body of a contract market or its clearing organization, or (d) law merchant.

(8) This section does not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(9) All rights of a counterparty under the act shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts, if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Source: Laws 2011, LB72, § 7.

44-4862 Act, how cited.

Sections 44-4801 to 44-4862 shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Source: Laws 1991, LB 236, § 85; Laws 2004, LB 1047, § 17; Laws 2011, LB72, § 8.

ARTICLE 55

SURPLUS LINES INSURANCE

Section

- 44-5502. Terms, defined.
- 44-5503. Surplus lines license; issuance.
- 44-5504. Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.
- 44-5505. Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.
- 44-5506. Surplus lines licensee; quarterly statement; tax payment; director; powers.
- 44-5508. Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.
- 44-5510. Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.
- 44-5511. Surplus lines licensee; report; contents; when due.
- 44-5515. Exempt commercial purchaser; taxes; form.

44-5502 Terms, defined.

For purposes of the Surplus Lines Insurance Act:

(1) Affiliated group means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;

(2) Control means:

(a) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent or more of any class of voting securities of another entity; or

(b) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(3) Department means the Department of Insurance;

(4) Director means the Director of Insurance;

(5)(a) Exempt commercial purchaser means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(C) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section; or

(E) The person is a municipality with a population in excess of fifty thousand inhabitants.

(b) Beginning on the fifth occurrence of January 1 after July 21, 2011, and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (5)(a)(iii)(A), (B), and (D) of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

(6) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103 but does not include a risk retention group as defined in 15 U.S.C. 3901(a)(4);

(7)(a) Except as provided in subdivision (7)(b) of this section, home state means, with respect to an insured, (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence or (ii) if one hundred percent of the insured risk is located out of the state referred to in subdivision (7)(a)(i) of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, home state means the home state, as determined pursuant to subdivision (7)(a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(8) Insurer has the same meaning as in section 44-103;

(9) Nonadmitted insurance means any property and casualty insurance permitted to be placed directly or through surplus lines licensees with a nonadmitted insurer eligible to accept such insurance; and

(10) Qualified risk manager means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22; Laws 2011, LB70, § 1.

44-5503 Surplus lines license; issuance.

The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation.

The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number. The director may utilize the national insurance producer data base of the National Association of Insurance Commissioners, or any other equivalent uniform national data base, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-139; Laws 1955, c. 168, § 3, p. 479; Laws 1978, LB 836, § 1; Laws 1989, LB 92, § 29; R.S.Supp.,1990, § 44-139; Laws 1992, LB 1006, § 3; Laws 1997, LB 752, § 113; Laws 2001, LB 51, § 38; Laws 2002, LB 1139, § 36; Laws 2011, LB70, § 2.

44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.

(1) No person, other than an exempt commercial purchaser, shall place, procure, or effect insurance for or on behalf of an insured whose home state is the State of Nebraska in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990,

§ 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23; Laws 2011, LB70, § 3.

44-5505 Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (1)(c) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name of the insured, (10) the address of the principal residence of the insured or the address at which the insured maintains its principal place of business, (11) a brief and general description of the risk or exposure insured and where located, (12) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (13) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-141; Laws 1978, LB 836, § 3; Laws 1989, LB 92, § 31; R.S.Supp.,1990, § 44-141; Laws 1992, LB 1006, § 5; Laws 2005, LB 119, § 20; Laws 2011, LB70, § 4.

44-5506 Surplus lines licensee; quarterly statement; tax payment; director; powers.

(1) For purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such act existed on January 1, 2011, the director may enter into the Nonadmitted Insurance Multi-State Agreement in order to facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance premium taxes.

(2) The director may participate in the clearinghouse established through the Nonadmitted Insurance Multi-State Agreement for the purpose of collecting and disbursing to reciprocal states any funds collected applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with the State of Nebraska, the net premium tax shall be retained by the State

of Nebraska. If the director chooses to participate in the clearinghouse for the purpose authorized by this subsection, the director may also participate in such clearinghouse for purposes of surplus lines policies applicable to risks located solely within this state.

(3) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall, on or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, make and file with the department a verified statement upon a form prescribed by the department or a designee of the director which shall exhibit the true amount of all such business transacted during that period.

(4)(a) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall collect and pay to the director or the director's designee, at the time the statement required under subsection (3) of this section is filed, a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150.

(b) When the insurance covers properties, risks, or exposures located or to be performed solely in this state on behalf of an insured whose home state is the State of Nebraska, the sum payable shall be computed based on an amount equal to three percent of the premiums to be remitted to the State Treasurer in accordance with section 77-912.

(c) When the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on:

(i) For purposes of the portion that is attributable to instate risks, an amount and rate equal to that set forth in subdivision (4)(b) of this section; plus

(ii) For purposes of the portion that is attributable to out-of-state risks, an amount equal to the portion of the premiums allocated to each of the other states or territories and at a rate as established by each state or territory as being applicable to the properties, risks, or exposures located or performed outside of this state. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from rebating, for any reason, any portion of the tax.

(5) The director may utilize or adopt the allocation schedule included in the Nonadmitted Insurance Multi-State Agreement for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state in which properties, risks, or exposures are located.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-142; Laws 1978, LB 836, § 4; Laws 1987, LB 302, § 4; Laws 1989, LB 92, § 32; R.S.Supp.,1990, § 44-142; Laws 1992, LB 1006, § 6; Laws 2011, LB70, § 5.

44-5508 Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

(1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

(a) Is authorized to write such insurance in its domiciliary jurisdiction;

(b) Has established satisfactory evidence of good repute and financial integrity; and

(c)(i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or

(ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(i) of this section, then upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director shall not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(3) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(4)(a) No nonadmitted foreign or alien insurer shall transact business under the Surplus Lines Insurance Act if it does not comply with the surplus and capital requirements of subsection (1) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subsection (2) of this section.

Source: Laws 1913, c. 154, § 26, p. 410; R.S.1913, § 3162; Laws 1919, c. 190, tit. V, art. III, § 19, p. 589; C.S.1922, § 7763; C.S.1929, § 44-219; R.S.1943, § 44-147; Laws 1951, c. 135, § 2, p. 558; Laws 1971, LB 757, § 1; Laws 1977, LB 40, § 230; Laws 1978, LB 836, § 6; Laws 1989, LB 92, § 33; R.S.Supp.,1990, § 44-147; Laws 1992, LB 1006, § 8; Laws 1994, LB 978, § 31; Laws 2005, LB 119, § 21; Laws 2011, LB70, § 6.

44-5510 Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.

(1) If an applicant for insurance is unable to procure such insurance as he or she deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from a nonadmitted insurer upon the following terms and conditions:

(a) The insurance shall be procured from a surplus lines licensee;

(b) The insurance procured shall not include any insurance described in subdivisions (1) through (4) of section 44-201, except that this subdivision shall not prohibit the procurement of disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer;

(c) Not later than thirty days after the effective date of such insurance, the insured shall provide, in writing, his or her permission for such insurance to be written in a nonadmitted insurer and his or her acknowledgment that, in the event of the insolvency of such insurer, the policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association; and

(d) Compliance with section 44-5511.

(2) A surplus lines licensee seeking to procure or place nonadmitted insurance for an exempt commercial purchaser whose home state is the State of Nebraska shall not be required to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if:

(a) The surplus lines licensee procuring or placing the insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance for a nonadmitted insurer.

Source: Laws 1978, LB 836, § 8; Laws 1989, LB 92, § 35; R.S.Supp.,1990, § 44-147.02; Laws 1992, LB 1006, § 10; Laws 2011, LB70, § 7; Laws 2012, LB1064, § 1.

Cross References

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

44-5511 Surplus lines licensee; report; contents; when due.

On or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, every surplus lines licensee shall file with the department a report containing such information as the department may require, including: (1) The name of the nonadmitted insurer; (2) the name of the licensee; (3) the number of policies issued by each nonadmitted insurer; (4) except for insurance placed or procured on behalf of an exempt commercial purchaser, a sworn statement by the licensee with regard to the coverages described in the quarterly report that, to the best of the licensee's knowledge and belief, the licensee could not reasonably procure such coverages from an admitted insurer; and (5) the premium volume for each nonadmitted insurer by line of business.

Source: Laws 1978, LB 836, § 9; Laws 1989, LB 92, § 36; R.S.Supp.,1990, § 44-147.03; Laws 1992, LB 1006, § 11; Laws 2011, LB70, § 8.

44-5515 Exempt commercial purchaser; taxes; form.

Every exempt commercial purchaser whose home state is the State of Nebraska shall, on or before February 15 for the quarter ending the preceding

December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, pay to the department a tax in the amount required by subdivision (4)(a) of section 44-5506. The calculation of the taxes due pursuant to this section shall be based only on those premiums remitted for the placement or procurement of insurance by an exempt commercial purchaser whose home state is the State of Nebraska. The department shall prescribe a form for an exempt commercial purchaser tax filing.

Source: Laws 2007, LB117, § 24; Laws 2011, LB70, § 9.

ARTICLE 57

PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS

Section

44-5702. Terms, defined.

44-5702 Terms, defined.

For purposes of the Producer-Controlled Property and Casualty Insurer Act:

(1) Accredited state shall mean a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards established and promulgated from time to time by the National Association of Insurance Commissioners;

(2) Captive insurers shall mean insurance companies owned by another organization the exclusive purpose of which is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds the exclusive purpose of which is to insure risks to member organizations or group members and their affiliates;

(3) Control or controlled shall have the same meaning as in section 44-2121;

(4) Controlled insurer shall mean an insurer which is controlled, directly or indirectly, by a producer;

(5) Controlling producer shall mean a producer which, directly or indirectly, controls an insurer;

(6) Director shall mean the Director of Insurance;

(7) Insurer shall mean any person, firm, association, or corporation holding a certificate of authority to transact property and casualty insurance business in this state. Insurer shall not include:

(a) Residual market pools and joint underwriting authorities or associations; and

(b) Captive insurers other than risk retention groups as defined in 15 U.S.C. 3901 et seq. and 42 U.S.C. 9671, as such sections existed on January 1, 2014; and

(8) Producer shall mean an insurance broker or any other person, firm, association, or corporation when, for any compensation, commission, or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance

contract on behalf of an insured other than the person, firm, association, or corporation.

Source: Laws 1992, LB 1006, § 69; Laws 2014, LB700, § 17.
Operative date July 18, 2014.

ARTICLE 60

INSURERS RISK-BASED CAPITAL ACT

Section

- 44-6007.02. Health organization, defined.
- 44-6008. Insurer, defined.
- 44-6009. Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.
- 44-6015. Risk-based capital reports.
- 44-6016. Company action level event.

44-6007.02 Health organization, defined.

Health organization means a health maintenance organization, prepaid limited health service organization, prepaid dental service corporation, or other managed care organization. Health organization does not include a life and health insurer, a fraternal benefit society, or a property and casualty insurer as defined in section 44-6008 that is otherwise subject to either life and health or property and casualty risk-based capital requirements.

Source: Laws 1999, LB 258, § 12; Laws 2013, LB426, § 2.

44-6008 Insurer, defined.

Insurer means an insurer as defined in section 44-103 authorized to transact the business of insurance, except that insurer does not include health organizations, unincorporated mutual associations, assessment associations, health maintenance organizations, prepaid dental service corporations, prepaid limited health service organizations, monoline mortgage guaranty insurers, monoline financial guaranty insurers, title insurers, prepaid legal corporations, intergovernmental risk management pools, and any other kind of insurer to which the application of the Insurers and Health Organizations Risk-Based Capital Act, in the determination of the director, would be clearly inappropriate. Insurer includes a risk retention group.

Insurer, when referring to life and health insurers, means an insurer authorized to transact life insurance business and sickness and accident insurance business specified in subdivisions (1) through (4) of section 44-201, or any combination thereof, and also includes fraternal benefit societies authorized to transact business specified in sections 44-1072 to 44-10109.

Insurer, when referring to property and casualty insurers, means an insurer authorized to transact property insurance business and casualty insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201, or any combination thereof, and also includes an insurer authorized to transact insurance business specified in subdivision (4) of section 44-201 if also authorized to transact insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201.

Source: Laws 1993, LB 583, § 20; Laws 1994, LB 978, § 35; Laws 1999, LB 258, § 13; Laws 2013, LB426, § 3; Laws 2014, LB700, § 18.
Operative date July 18, 2014.

44-6009 Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.

Negative trend, with respect to a life and health insurer or a fraternal benefit society, means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the life risk-based capital instructions.

Source: Laws 1993, LB 583, § 21; Laws 1994, LB 978, § 36; Laws 1999, LB 258, § 14; Laws 2008, LB855, § 29; Laws 2013, LB426, § 4.

44-6015 Risk-based capital reports.

(1) Every domestic insurer or domestic health organization shall annually, on or prior to March 1, referred to in this section as the filing date, prepare and submit to the director a risk-based capital report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer or domestic health organization shall file its risk-based capital report:

(a) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and

(b) With the insurance commissioner in any state in which the insurer or health organization is authorized to do business if such insurance commissioner has notified the insurer or health organization of its request in writing, in which case the insurer or health organization shall file its risk-based capital report not later than the later of:

(i) Fifteen days after the receipt of notice to file its risk-based capital report with such state; or

(ii) The filing date.

(2) A life and health insurer's or a fraternal benefit society's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(3) A property and casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(4) A health organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

- (a) Asset risk;
- (b) Credit risk;
- (c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(5) An excess of capital over the amount produced by the risk-based capital requirements contained in the Insurers and Health Organizations Risk-Based Capital Act and the formulas, schedules, and instructions referenced in the act is desirable in the business of insurance. Accordingly, insurers and health organizations should seek to maintain capital above the risk-based capital levels required by the act. Additional capital is used and useful in the insurance business and helps to secure an insurer or a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in the act.

(6) If a domestic insurer or a domestic health organization files a risk-based capital report which in the judgment of the director is inaccurate, the director shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer or health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Source: Laws 1993, LB 583, § 27; Laws 1994, LB 978, § 37; Laws 1999, LB 258, § 20; Laws 2013, LB426, § 5.

44-6016 Company action level event.

(1) Company action level event means any of the following events:

(a) The filing of a risk-based capital report by an insurer or a health organization which indicates that:

(i) The insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;

(ii) If a life and health insurer or a fraternal benefit society, the insurer or society has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and has a negative trend;

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions; or

(iv) If a health organization has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a company action level event, the insurer or health organization shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years in the case of an insurer or at least the two succeeding years in the case of a health organization, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's or health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance, if any, in each case.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(4) Within sixty days after the submission by an insurer or a health organization of a risk-based capital plan to the director, the director shall notify the insurer or health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines that the risk-based capital plan is unsatisfactory, the

notification to the insurer or health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon notification from the director, the insurer or health organization shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer or health organization shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director; or

(b) If the insurer or health organization challenges the notification from the director under section 44-6020, within forty-five days after a notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(5) In the event of a notification by the director to an insurer or a health organization that the insurer's or health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's or health organization's right to a hearing under section 44-6020, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer or domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer or health organization is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 44-6021; and

(b) The insurance commissioner of such state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) or (4) of this section.

Source: Laws 1993, LB 583, § 28; Laws 1994, LB 978, § 38; Laws 1999, LB 258, § 21; Laws 2008, LB855, § 30; Laws 2013, LB426, § 6; Laws 2014, LB700, § 19.
Operative date July 18, 2014.

ARTICLE 73

HEALTH CARRIER GRIEVANCE PROCEDURE ACT

Section

44-7306. Grievance register.

44-7308. Grievance review.

44-7309. Repealed. Laws 2013, LB 147, § 24.

44-7310. Standard review of adverse determinations.

44-7311. Expedited reviews.

44-7306 Grievance register.

(1) A health carrier shall maintain in a grievance register written records to document all grievances received during a calendar year. A request for a review

of an adverse determination shall be processed in compliance with section 44-7308 but not considered a grievance for purposes of the grievance register unless such request includes a written grievance. For each grievance required to be recorded in the grievance register, the grievance register shall contain, at a minimum, the following information:

- (a) A general description of the reason for the grievance;
- (b) Date received;
- (c) Date of each review or hearing;
- (d) Resolution of the grievance;
- (e) Date of resolution; and
- (f) Name of the covered person for whom the grievance was filed.

(2) The grievance register shall be maintained in a manner that is reasonably clear and accessible to the director. A grievance register maintained by a health maintenance organization shall also be accessible to the Department of Health and Human Services.

(3) A health carrier shall retain the grievance register compiled for a calendar year for the longer of three years or until the director has adopted a final report of an examination that contains a review of the grievance register for that calendar year.

Source: Laws 1998, LB 1162, § 71; Laws 2007, LB296, § 201; Laws 2013, LB147, § 19.

44-7308 Grievance review.

(1) If a covered person makes a request to a health carrier for a health care service and the request is denied, the health carrier shall provide the covered person with an explanation of the reasons for the denial, a written notice of how to submit a grievance, and the telephone number to call for information and assistance. The health carrier, at the time of a determination not to certify an admission, a continued stay, or other health care service, shall inform the attending or ordering provider of the right to submit a grievance or a request for an expedited review and, upon request, shall explain the procedures established by the health carrier for initiating a review. A grievance involving an adverse determination may be submitted by the covered person, the covered person's representative, or a provider acting on behalf of a covered person, except that a provider may not submit a grievance involving an adverse determination on behalf of a covered person in a situation in which federal or other state law prohibits a provider from taking that action. A health carrier shall ensure that a majority of the persons reviewing a grievance involving an adverse determination have appropriate expertise. A health carrier shall issue a copy of the written decision to a provider who submits a grievance on behalf of a covered person. A health carrier shall conduct a review of a grievance involving an adverse determination in accordance with subsection (3) of this section and section 44-7310, but such a grievance is not subject to the grievance register reporting requirements of section 44-7306 unless it is a written grievance.

(2)(a) A grievance concerning any matter except an adverse determination may be submitted by a covered person or a covered person's representative. A health carrier shall issue a written decision to the covered person or the covered person's representative within fifteen working days after receiving a

grievance. The person or persons reviewing the grievance shall not be the same person or persons who made the initial determination denying a claim or handling the matter that is the subject of the grievance. If the health carrier cannot make a decision within fifteen working days due to circumstances beyond the health carrier's control, the health carrier may take up to an additional fifteen working days to issue a written decision, if the health carrier provides written notice to the covered person of the extension and the reasons for the delay on or before the fifteenth working day after receiving a grievance.

(b) A covered person does not have the right to attend, or to have a representative in attendance, at the grievance review. A covered person is entitled to submit written material. The health carrier shall provide the covered person the name, address, and telephone number of a person designated to coordinate the grievance review on behalf of the health carrier. The health carrier shall make these rights known to the covered person within three working days after receiving a grievance.

(3) The written decision issued pursuant to the procedures described in subsections (1) and (2) of this section and section 44-7310 shall contain:

(a) The names, titles, and qualifying credentials of the person or persons acting as the reviewer or reviewers participating in the grievance review process;

(b) A statement of the reviewers' understanding of the covered person's grievance;

(c) The reviewers' decision in clear terms and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health carrier's position;

(d) A reference to the evidence or documentation used as the basis for the decision;

(e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and

(f) Notice of the covered person's right to contact the director's office. The notice shall contain the telephone number and address of the director's office.

Source: Laws 1998, LB 1162, § 73; Laws 2013, LB147, § 20.

44-7309 Repealed. Laws 2013, LB 147, § 24.

44-7310 Standard review of adverse determinations.

(1) A health carrier shall establish written procedures for a standard review of an adverse determination. Review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) When reasonably necessary or when requested by the provider acting on behalf of a covered person, standard reviews shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination.

(3) For standard reviews the health carrier shall notify in writing both the covered person and the attending or ordering provider of the decision within

fifteen working days after the request for a review. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(4) In any case in which the standard review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law.

Source: Laws 1998, LB 1162, § 75; Laws 2013, LB147, § 21.

44-7311 Expedited reviews.

(1) A health carrier shall establish written procedures for the expedited review of a grievance involving a situation in which the timeframe of the standard grievance procedures set forth in sections 44-7308 to 44-7310 would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. A request for an expedited review may be submitted orally or in writing. A request for an expedited review of an adverse determination may be submitted orally or in writing and shall be subject to the review procedures of this section, if it meets the criteria of this section. However, for purposes of the grievance register requirements of section 44-7306, a request for an expedited review shall not be included in the grievance register unless the request is submitted in writing. Expedited review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) Expedited reviews which result in an adverse determination shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer or peers shall not have been involved in the initial adverse determination.

(3) A health carrier shall provide expedited review to all requests concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility.

(4) An expedited review may be initiated by a covered person or a provider acting on behalf of a covered person.

(5) In an expedited review, all necessary information, including the health carrier's decision, shall be transmitted between the health carrier and the covered person or the provider acting on behalf of a covered person by telephone, facsimile, or the most expeditious method available.

(6) In an expedited review, a health carrier shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the review is commenced. If the expedited review is a concurrent review determination, the health care service shall be continued without liability to the covered person until the covered person has been notified of the determination.

(7) A health carrier shall provide written confirmation of its decision concerning an expedited review within two working days after providing notification of that decision, if the initial notification was not in writing. The written

decision shall contain the provisions required in subsection (3) of section 44-7308.

(8) A health carrier shall provide reasonable access, not to exceed one business day after receiving a request for an expedited review, to a clinical peer who can perform the expedited review.

(9) In any case in which the expedited review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law. Except as expressly provided in this section, in conducting the review, the health carrier shall adhere to timeframes that are reasonable under the circumstances.

(10) A health carrier shall not be required to provide an expedited review for retrospective adverse determinations.

Source: Laws 1998, LB 1162, § 76; Laws 2013, LB147, § 22.

ARTICLE 75

PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section

44-7507. Monitoring competition; determining competitive markets; hearing.

44-7507 Monitoring competition; determining competitive markets; hearing.

(1) The director shall monitor competition and the availability of insurance in commercial insurance markets. Such monitoring may include requests for information from insurers regarding the lines, types, and classes of insurance that the insurer is seeking and able to write. When requested by an insurer with its response, the director shall keep such responses confidential except as they may be compiled in summaries.

(2) If the director finds that a commercial insurance coverage is contributing to problems in the insurance marketplace due to excessive rates or lack of availability, the director shall submit electronically a report of this finding to the Legislature. Such report may be a separate report or a supplement to the annual report required by section 44-113.

(3) A competitive market is presumed to exist unless the director, after notice and hearing in accordance with the Administrative Procedure Act, determines by order that a degree of competition sufficient to warrant reliance upon competition as a regulator of rating systems, policy forms, or both does not exist in the market. In determining whether a sufficient degree of competition exists, the director may consider:

(a) Relevant tests of workable competition pertaining to market structure, market performance, and market conduct;

(b) The practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers;

(c) Whether long-term and short-term profitability provides evidence of excessive rates;

(d) Whether rating systems filed under section 44-7508 would frequently require amendment or disapproval if filed under sections 44-7510 and 44-7511;

(e) Whether additional competition would appear likely to significantly lower rates or improve the policy forms offered to insureds;

(f) Whether rates would be lowered or policy forms would be improved by the imposition of a system of prior approval regulation;

(g) Whether policy forms filed under section 44-7508.02 would frequently require amendment or disapproval if filed under section 44-7513; and

(h) Any other relevant factors.

(4) If a market for a particular type of insurance is found to lack sufficient competition to warrant reliance upon competition as a regulator of rating systems or policy forms, the director shall identify factors that appear to be the cause and the extent to which remediation can be achieved on a short-term or long-term basis. To the extent that significant remediation can be achieved consistent with the other goals of the Property and Casualty Insurance Rate and Form Act, the director shall take such action as may be within the director's authority to accomplish such remediation or to promote the accomplishment of such remediation.

(5) If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of sections 44-7510 and 44-7511 to the rates charged for a type of insurance, an order shall be issued pursuant to this section that applies sections 44-7510 and 44-7511 to the type of insurance. If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of section 44-7513 to regulate the forms offered for a type of insurance, an order shall be issued pursuant to this section that applies section 44-7513 to the type of insurance. An order issued under this subsection shall expire no later than one year after its original issue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition. Any order that is renewed after its first year shall not exceed three years after reissue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition.

(6) The director shall keep on file in one location all complaints from the public and insurance industry sources alleging that a competitive market does not exist. The director shall investigate each complaint to the extent necessary to determine the truth of the allegations. The director shall keep a summary of his or her findings and conclusions with the complaint.

Source: Laws 2000, LB 1119, § 7; Laws 2003, LB 216, § 20; Laws 2012, LB782, § 55.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 81

NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

Section

44-8101. Act, how cited.

44-8102. Purpose of act.

44-8103. Applicability of act.

Section

44-8104. Act; exemptions.

44-8105. Terms, defined.

44-8106. Recommendation; purchase, exchange, or replacement of annuity; requirements; insurer; duties; insurance producer; prohibited acts; Director of Insurance; powers.

44-8107. Insurer; duties; Director of Insurance; powers; violations.

44-8108. Insurance producer; duties.

44-8109. Changes made to act; applicability.

44-8101 Act, how cited.

Sections 44-8101 to 44-8109 shall be known and may be cited as the Nebraska Protection in Annuity Transactions Act.

Source: Laws 2006, LB 875, § 13; Laws 2007, LB117, § 26; Laws 2012, LB887, § 21.

44-8102 Purpose of act.

The purpose of the Nebraska Protection in Annuity Transactions Act is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations made by insurance producers and insurers to consumers regarding annuity transactions so that consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Source: Laws 2006, LB 875, § 14; Laws 2007, LB117, § 27; Laws 2012, LB887, § 22.

44-8103 Applicability of act.

The Nebraska Protection in Annuity Transactions Act applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase, exchange, or replacement.

Source: Laws 2006, LB 875, § 15; Laws 2007, LB117, § 28; Laws 2012, LB887, § 23.

44-8104 Act; exemptions.

Unless otherwise specifically included, the Nebraska Protection in Annuity Transactions Act does not apply to transactions involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Source: Laws 2006, LB 875, § 16; Laws 2007, LB117, § 29; Laws 2012, LB887, § 24.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.

44-8105 Terms, defined.

For purposes of the Nebraska Protection in Annuity Transactions Act:

(1) Annuity means an annuity that is an insurance product under state law and is individually solicited, whether the product is classified as an individual or group annuity;

(2) Continuing education provider means an individual or entity that is approved to offer continuing education courses pursuant to subdivision (1)(b) of section 44-3905;

(3) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(4) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities;

(5) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a consumer that results in a purchase or exchange of an annuity in accordance with that advice;

(6) Replacement means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase; and

(7) Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and need, including the financial resources used for the funding of the annuity;

(d) Financial experience;

- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;
- (k) Risk tolerance; and
- (l) Tax status.

Source: Laws 2006, LB 875, § 17; Laws 2007, LB117, § 30; Laws 2012, LB887, § 25.

44-8106 Recommendation; purchase, exchange, or replacement of annuity; requirements; insurer; duties; insurance producer; prohibited acts; Director of Insurance; powers.

(1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer. This information shall include the consumer's suitability information, and, if there is a reasonable basis to believe the information, all of the following:

(a) That the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) That the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(c) That the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including the consideration as to whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(2) Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as expressly permitted under subsection (4) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a) Except as provided under subdivision (4)(b) of this section, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection (1) or (3) of this section related to any annuity transaction if:

(i) No recommendation is made;

(ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(b) An insurer's issuance of an annuity subject to subdivision (4)(a) of this section shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) An insurance producer, or if no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(a) Make a record of any recommendation subject to subsection (1) of this section;

(b) Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this section, including, but not limited to, the following requirements:

(i) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this section and shall incorporate such requirements into relevant insurance producer training manuals;

(ii) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 44-8108;

(iii) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(iv) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or

through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable, including, but not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision shall prevent an insurer from complying with this subdivision by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity; and

(vi) The insurer shall annually provide a report to senior management, including the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under subdivision (a) of this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 44-8107 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subdivision (b)(ii) of this subsection.

(ii) An insurer's supervision system under subdivision (a) of this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(A) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to supervise an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8)(a) Compliance with the Financial Industry Regulatory Authority Rules pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this section if the insurer complies with the requirements of subdivision (6)(b) of this section. This subsection applies to Financial Industry Regulatory Authority broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the ability of the Director of Insurance to investigate potential violations of and enforce the Nebraska Protection in Annuity Transactions Act.

(b) An insurer seeking to comply with the Financial Industry Regulatory Authority broker-dealer sales of variable annuities and fixed annuities to satisfy the requirements of this section shall:

(i) Monitor the Financial Industry Regulatory Authority member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) Provide to the Financial Industry Regulatory Authority member broker-dealer information and reports that are reasonably appropriate to assist the Financial Industry Regulatory Authority member broker-dealer to maintain its supervision system.

Source: Laws 2006, LB 875, § 18; Laws 2007, LB117, § 31; Laws 2012, LB887, § 26.

44-8107 Insurer; duties; Director of Insurance; powers; violations.

(1) An insurer is responsible for compliance with the Nebraska Protection in Annuity Transactions Act. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by an insurance producer's or insurer's violation of the act; and

(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or subdivision (4)(b) of such section if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Source: Laws 2006, LB 875, § 19; Laws 2007, LB117, § 32; Laws 2012, LB887, § 27.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-8108 Insurance producer; duties.

(1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(2)(a)(i) An insurance producer who engages in the sale of annuity products shall complete a one-time four-credit training course approved by the Department of Insurance and provided by a department-approved education provider.

(ii) Insurance producers who hold a life insurance line of authority on July 19, 2012, and who desire to sell annuities shall complete the requirements of this subsection within six months after July 19, 2012. Individuals who obtain a

life insurance line of authority on or after July 19, 2012, shall not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(b) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four continuing education credits, but may be longer.

(c) The training required under this subsection shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices and replacement and disclosure requirements.

(d) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity training course intended to comply with this subsection shall register as a continuing education provider in this state and comply with the requirements applicable to insurance producer continuing education courses as set forth in section 44-3905.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with sections 44-3901 to 44-3908.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with sections 44-3901 to 44-3908.

(h) The satisfaction of training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection.

(i) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by National Association of Insurance Commissioners-sponsored data base systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

Source: Laws 2012, LB887, § 28.

44-8109 Changes made to act; applicability.

The changes made to the Nebraska Protection in Annuity Transactions Act by Laws 2012, LB887, shall apply to solicitations occurring on and after January 1, 2013.

Source: Laws 2012, LB887, § 29.

ARTICLE 82

CAPTIVE INSURERS ACT

Section

44-8216. Creation of special purpose financial captive insurers; applicability of section; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

44-8216 Creation of special purpose financial captive insurers; applicability of section; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

(1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Guaranty of a parent means an agreement to pay specified obligations of the special purpose financial captive insurer by a parent of the special purpose financial captive insurer approved by the director that is not a counterparty and the guarantor has sufficient equity, less the equity of all counterparties that are subsidiaries of the guarantor, to satisfy the agreement during the life of the guaranty;

(c) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(d) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(e) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(f) Permitted investments means those investments that meet the qualifications set forth in section 44-8211;

(g) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(h) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(i) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(j) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3)(a) The provisions of the Captive Insurers Act, other than those in subdivision (3)(b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(c) In determining whether to issue a certificate of authority or to approve an amended plan of operation for a special purpose financial captive insurer required under section 44-8205, the director may consider any additional factors the director may deem relevant, including the specific type of life insurance risks insured by the special purpose financial captive insurer, the financial ability of a parent that issues a guaranty pursuant to this section to satisfy such guaranty, and any actuarial opinions or other statements or documents required by the director to evaluate such application.

(d) At the time a special purpose financial captive insurer files an application for a certificate of authority or submits an amended plan of operation in accordance with section 44-8205, and on each date the special purpose financial captive insurer is required to file an annual financial statement in this state, a senior actuarial officer of each ceding insurer shall file with the director a certification that the ceding insurer's transactions with the special purpose financial captive insurer are not being used to gain an unfair advantage in the pricing of the ceding insurer's products. A ceding insurer shall not be deemed to have gained an unfair advantage if the pricing of the policies and contracts reinsured by the special purpose financial captive insurer reflects, at the time those policies and contracts were issued, a reasonable long-term estimate of the cost to the ceding insurer of an alternative third-party transaction and utilizes current pricing assumptions.

(4) A special purpose financial captive insurer may be established as a stock corporation, limited liability company, partnership, or other form of organization approved by the director.

(5)(a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose

financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; entering into agreements in connection with obtaining guaranties of its parent; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate a special purpose financial captive insurer contract or an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6)(a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered into by the special purpose financial captive insurer must be approved by the director.

(8)(a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with

assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 44-8211.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost-sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either (A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director, including letters of credit or guaranties of a parent as described in subsection (9) of this section;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or

otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a)(i) Of the value of:

(A) The assets held in trust;

(B) Clean, or irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director; or

(C) Guaranties of the parent; and

(ii) For the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) Assets of the special purpose financial captive insurer are held or invested in one or more of the forms allowed in section 44-8211.

(10)(a)(i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10)(a)(i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best interest of

policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Source: Laws 2007, LB117, § 50; Laws 2012, LB887, § 30.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

ARTICLE 84

**MANDATE OPT-OUT AND INSURANCE
COVERAGE CLARIFICATION ACT**

Section

44-8401. Act, how cited.

44-8402. Legislative findings.

44-8403. Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract or policy; optional rider.

44-8404. Act; not construed as right to abortion.

44-8401 Act, how cited.

Sections 44-8401 to 44-8404 shall be known and may be cited as the Mandate Opt-Out and Insurance Coverage Clarification Act.

Source: Laws 2011, LB22, § 1.

44-8402 Legislative findings.

(1) The Legislature finds that:

(a) In the federal Patient Protection and Affordable Care Act, Public Law 111-148, federal tax dollars are routed via affordability credits to qualified health insurance plans offered through a health insurance exchange created under the act, including plans that provide coverage for abortion;

(b) Federal funding for health insurance plans that cover abortions is prohibited by the federal statutory restriction commonly known as the Hyde Amendment and the Federal Employees Health Benefits Program established under Chapter 89 of Title 5 of the United States Code, as amended;

(c) Section 1303 of the federal Patient Protection and Affordable Care Act explicitly permits each state to pass laws prohibiting qualified health insurance plans offered through a health insurance exchange created under the act in such state from offering abortion coverage. Such section allows a state to prohibit the use of public funds to subsidize health insurance plans that cover abortions within the state;

(d) The laws of the State of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman;

(e) *Rust v. Sullivan*, 500 U.S. 173 (1991), states that it is permissible for a state to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest; and

(f) A majority of the citizens of the State of Nebraska, like other Americans, oppose the use of public funds, both federal and state, to pay for abortions.

(2) Based on the findings in subsection (1) of this section, it is the purpose of the Mandate Opt-Out and Insurance Coverage Clarification Act to affirmatively opt out of allowing qualified health insurance plans that cover abortions to participate in health insurance exchanges within the State of Nebraska. Further, it is also the purpose of the act to limit the coverage of abortion in all health insurance plans, contracts, or policies delivered or issued for delivery in the State of Nebraska.

Source: Laws 2011, LB22, § 2.

44-8403 Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract or policy; optional rider.

(1) No abortion coverage shall be provided by a qualified health insurance plan offered through a health insurance exchange created pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148, within the State of Nebraska. This subsection shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the woman or to coverage for medical complications arising from an abortion.

(2) No health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska shall provide coverage for an elective abortion except through an optional rider to the policy for which an additional premium is paid solely by the insured. This subsection applies to any health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska by any health insurer, any nonprofit hospital, medical, surgical, dental, or health service corporation, any group health insurer, and any health maintenance organization subject to the laws of insurance in this state and any employer providing self-funded health insurance for his or her employees. This subsection also applies to any plan provision of hospital, medical, surgical, or funeral benefits or of coverage against accidental death or injury if such benefits or coverage are incidental to or a part of any other insurance plan delivered or issued for delivery in the State of Nebraska.

(3) The issuer of a health insurance plan, contract, or policy in the State of Nebraska shall not provide any incentive or discount to an insured if the insured elects abortion coverage.

(4) For purposes of this section, elective abortion means an abortion (a) other than a spontaneous abortion or (b) that is performed for any reason other than to prevent the death of the female upon whom the abortion is performed.

Source: Laws 2011, LB22, § 3.

44-8404 Act; not construed as right to abortion.

Nothing in the Mandate Opt-Out and Insurance Coverage Clarification Act shall be construed as creating a right to an abortion.

Source: Laws 2011, LB22, § 4.

ARTICLE 85

PORTABLE ELECTRONICS INSURANCE ACT

Section
44-8501. Act, how cited.

Section

- 44-8502. Terms, defined.
- 44-8503. Vendor; limited lines insurance license; issuance; application; contents.
- 44-8504. Limited lines insurance license; application; contents; period valid; fees.
- 44-8505. Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.
- 44-8506. Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.
- 44-8507. Violations; director; powers; administrative fine.
- 44-8508. Insurer; rights; duties; notice; policy; termination; vendor; duties.
- 44-8509. Records; maintenance.

44-8501 Act, how cited.

Sections 44-8501 to 44-8509 shall be known and may be cited as the Portable Electronics Insurance Act.

Source: Laws 2011, LB535, § 1.

44-8502 Terms, defined.

For purposes of the Portable Electronics Insurance Act:

- (1) Customer means a person who purchases portable electronics;
- (2) Covered customer means a customer who elects coverage pursuant to a portable electronics insurance policy issued to a vendor of portable electronics;
- (3) Director means the Director of Insurance;
- (4) Location means any physical location in this state or any web site, call center, or other site or similar location to which Nebraska customers may be directed;
- (5) Portable electronics means a device that is personal, self-contained, easily carried by an individual, and battery-operated and includes devices used for electronic communication, viewing, listening, recording, computing, or global positioning. Portable electronics does not include telecommunications switching equipment, transmission wires, cellular site transceiver equipment, or other equipment or system used by a telecommunications company to provide telecommunications service to consumers;
- (6)(a) Portable electronics insurance means insurance that provides coverage for the repair or replacement of portable electronics and may provide coverage for portable electronics that are lost, stolen, damaged, or inoperable due to mechanical failure or malfunction or suffer other similar causes of loss; and
- (b) Portable electronics insurance does not include:
 - (i) A service contract under the Motor Vehicle Service Contract Reimbursement Insurance Act;
 - (ii) A service contract or extended warranty providing coverage as described in subdivision (2) of section 44-102.01;
 - (iii) A policy of insurance providing coverage for a seller's or manufacturer's obligations under a warranty; or
 - (iv) A homeowner's, renter's, private passenger automobile, commercial multiperil, or other similar policy;
- (7) Portable electronics transaction means the sale or lease of portable electronics by a vendor to a customer or the sale of a service related to the use of portable electronics by a vendor to a customer;

(8) Supervising entity means a business entity that is a licensed insurance producer or insurer; and

(9) Vendor means a person in the business of engaging in portable electronics transactions directly or indirectly.

Source: Laws 2011, LB535, § 2.

Cross References

Motor Vehicle Service Contract Reimbursement Insurance Act, see section 44-3520.

44-8503 Vendor; limited lines insurance license; issuance; application; contents.

(1) A vendor shall hold a limited lines insurance license issued under the Portable Electronics Insurance Act to sell or offer coverage under a policy of portable electronics insurance.

(2) The director may issue a limited lines insurance license under the act. Such license shall authorize an employee or authorized representative of a vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in a portable electronics transaction.

(3) The vendor shall submit an application for a limited lines insurance license pursuant to section 44-8504 to the director, and a list of all locations in this state at which the vendor intends to offer such insurance coverage shall accompany the application. A vendor shall maintain such list and make it available for the director upon request.

(4) Notwithstanding any other provision of law, a limited lines insurance license issued under the act shall authorize the vendor and its employees or authorized representatives to engage in the activities permitted by the act.

Source: Laws 2011, LB535, § 3.

44-8504 Limited lines insurance license; application; contents; period valid; fees.

(1) An application for a limited lines insurance license shall be made to and filed with the director on forms prescribed and furnished by the director.

(2) An application for an initial or a renewal license shall:

(a) Provide the name, residence address, and other information required by the director for an employee or authorized representative of the vendor that is designated by the vendor as the person responsible for the vendor's compliance with the Portable Electronics Insurance Act. If the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance, the information required by this subdivision shall be provided for all persons of record having beneficial ownership of ten percent or more of any class of securities of the vendor registered under federal securities law; and

(b) Provide the location of the vendor's home office.

(3) Any application for licensure under the act for an existing vendor shall be made within ninety days after the application is made available by the director.

(4) An initial license issued pursuant to the act shall be valid for one year and expires on April 30 of each year.

(5) Any vendor licensed under the act shall pay an initial license fee to the director in an amount prescribed by the director but not to exceed one hundred dollars and shall pay a renewal fee in an amount prescribed by the director but not to exceed one hundred dollars.

Source: Laws 2011, LB535, § 4.

44-8505 Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.

(1) At each location at which portable electronics insurance is offered to a customer, a brochure or other written material shall be available to the customer which:

(a) Discloses the fact that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other similar insurance coverage;

(b) States that the enrollment by the customer in a portable electronics insurance coverage program is not required in order to purchase or lease portable electronics or services;

(c) Summarizes the material terms of the portable electronics insurance, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) The benefits of the coverage; and

(v) The key terms and conditions of the coverage, including whether portable electronics may be repaired or replaced with a similar reconditioned make or model or with nonoriginal manufacturer parts or equipment;

(d) Summarizes the process for filing a claim, including a description of how to return the portable electronics and the maximum fee applicable if the customer fails to comply with any equipment return requirements; and

(e) States that the customer may cancel enrollment for portable electronics insurance coverage at any time and receive any applicable unearned premium refund on a pro rata basis.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor for its covered customers. A covered customer who elects to enroll for coverage shall receive a certificate of insurance and an explanation of coverage or instructions on how to obtain such materials upon request.

(3) Eligibility and underwriting standards for customers who elect to enroll in portable electronics insurance coverage shall be established by the insurer for each portable electronics insurance program.

Source: Laws 2011, LB535, § 5.

44-8506 Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.

(1) An employee or authorized representative of a vendor may sell or offer for sale portable electronics insurance to customers and shall not be subject to licensure as an insurance producer if:

(a) The vendor obtains a limited lines insurance license pursuant to section 44-8503 that authorizes its employees or authorized representatives to sell or offer for sale portable electronics insurance under this section;

(b) The insurer issuing the portable electronics insurance directly supervises or appoints a supervising entity to supervise the administration of the insurance program, including development of a training program for employees and authorized representatives of a vendor. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to employees and authorized representatives of a vendor who are directly involved in the activity of selling or offering for sale portable electronics insurance;

(ii) The training may be provided in electronic form. If the training is provided in electronic form, the supervising entity shall implement a supplemental education program that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction on the portable electronics insurance offered to customers and the disclosures required by section 44-8505; and

(c) The vendor does not advertise, represent, or otherwise hold itself or any of its employees or authorized representatives out as authorized insurers or licensed insurance producers.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the covered customer's bill. If the portable electronics insurance coverage is included in the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. If such insurance is purchased, the portable electronics insurance coverage offered by the limited lines insurance licensee to a customer is primary over any other insurance coverage applicable to the portable electronics. A vendor who bills and collects such charges shall not be required to maintain such funds in a segregated account if the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days after receipt. All funds received by a vendor from a covered customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services.

Source: Laws 2011, LB535, § 6.

44-8507 Violations; director; powers; administrative fine.

If a vendor violates any provision of the Portable Electronics Insurance Act, the director may, after notice and a hearing:

- (1) Revoke or suspend a limited lines insurance license issued under the act;
- (2) Impose such other penalties, including suspension of the transaction of insurance at specific vendor locations where violations have occurred, as the

director deems necessary or convenient to carry out the purposes of the act; and

(3) Impose an administrative fine of not more than one thousand dollars per violation or five thousand dollars in the aggregate.

Source: Laws 2011, LB535, § 7.

44-8508 Insurer; rights; duties; notice; policy; termination; vendor; duties.

Notwithstanding any other provision of law:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the vendor and enrolled customers with at least sixty days' notice, except that:

(a) An insurer may terminate an enrolled customer's insurance policy upon fifteen days' notice for:

(i) Discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under such policy; or

(ii) Nonpayment of premium; or

(b) An insurer may immediately terminate an enrolled customer's insurance policy:

(i) If the enrolled customer ceases to have active service with the vendor of portable electronics; or

(ii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the portable electronics insurance policy and the insurer sends notice of termination to the customer within thirty days after exhaustion of the limit. If such notice is not sent within the thirty-day period, the customer shall continue to be enrolled in such insurance policy notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the customer;

(2) If the insurer changes the terms and conditions, the insurer shall provide the vendor with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of the material changes;

(3) If a portable electronics insurance policy is terminated by a vendor, the vendor shall mail or deliver written notice to each enrolled customer at least thirty days prior to the termination advising the customer of such termination and of the effective date of termination; and

(4) If notice is required under this section, it shall be:

(a) In writing and may be mailed or delivered to a vendor at the vendor's mailing address and to an enrolled customer at such customer's last-known mailing address on file with the insurer. The insurer or vendor, as applicable, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or a commercial mail delivery service; or

(b) In electronic form. If notice is delivered in electronic form, the insurer or vendor, as applicable, shall maintain proof that the notice was sent.

Source: Laws 2011, LB535, § 8.

44-8509 Records; maintenance.

Any records pertaining to transactions under the Portable Electronics Insurance Act shall be kept available and open to inspection by the director or his or her representatives with notice and during business hours. Records shall be maintained for three years following the completion of transactions under the act.

Source: Laws 2011, LB535, § 9.

ARTICLE 86

INSURED HOMEOWNERS PROTECTION ACT

Section

44-8601. Act, how cited.

44-8602. Terms, defined.

44-8603. Contract to be paid from proceeds of property and casualty insurance policy; right to cancel; notice; residential contractor; duties.

44-8604. Residential contractor; prohibited acts.

44-8601 Act, how cited.

Sections 44-8601 to 44-8604 shall be known and may be cited as the Insured Homeowners Protection Act.

Source: Laws 2012, LB943, § 1.

44-8602 Terms, defined.

For purposes of the Insured Homeowners Protection Act:

(1) Residential contractor means a person in the business of contracting or offering to contract with an owner or possessor of residential real estate to (a) repair or replace a roof system or perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate or (b) perform interior or exterior cleanup services on residential real estate;

(2) Residential real estate means a new or existing building, including a detached garage, constructed for habitation by at least one but no more than four families; and

(3) Roof system means and includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

Source: Laws 2012, LB943, § 2.

44-8603 Contract to be paid from proceeds of property and casualty insurance policy; right to cancel; notice; residential contractor; duties.

(1) A person who has entered into a written contract with a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract prior to midnight on the later of the third business day after the person has (a) entered into the written contract or (b) received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy. Cancellation shall be evidenced by the person giving written notice of the cancellation to the residential contractor at the address of the residential contractor's place of business as stated in the contract. Written notice of cancellation may be given by delivering or mailing a signed and dated copy of the written notice of cancellation to the residential contractor at the address of the residential contractor's place of business as stated in the

contract. The notice of cancellation shall include a copy of the written notice from the person's insurer, if applicable, to the effect that all or part of the claim or contract is not a covered loss under the insurance policy. Notice of cancellation given by mail shall be effective upon deposit in the United States mail, postage prepaid, if properly addressed to the residential contractor. Notice of cancellation is not required to be in any particular form and is sufficient if the notice indicates, by any form of written expression, the intent of the insured not to be bound by the contract.

(2) Within ten days after a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy has been canceled by notification pursuant to this section, the residential contractor shall tender to the person canceling the contract any payments, partial payments, or deposits made by the person and any note or other evidence of indebtedness, except that if the residential contractor has provided any goods or services agreed to by such person in writing to be necessary to prevent damage to the premises, the residential contractor shall be entitled to be paid the reasonable value of such goods or services. Any provision in a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy that requires the payment of any fee which is not for such goods or services shall not be enforceable against any person who has canceled a contract pursuant to this section.

Source: Laws 2012, LB943, § 3.

44-8604 Residential contractor; prohibited acts.

A residential contractor shall not promise to rebate any portion of an insurance deductible as an inducement to the sale of goods or services. A promise to rebate any portion of an insurance deductible includes granting any allowance or offering any discount against the fees to be charged or paying an insured or a person directly or indirectly associated with the residential real estate any form of compensation, except for any item of nominal value.

Source: Laws 2012, LB943, § 4.

ARTICLE 87

NEBRASKA EXCHANGE TRANSPARENCY ACT

Section

- 44-8701. Act, how cited.
- 44-8702. Purpose of act.
- 44-8703. Nebraska Exchange Stakeholder Commission; created; members; terms; vacancy; removal; hearing.
- 44-8704. Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.
- 44-8705. Nebraska Exchange Stakeholder Commission; duties.
- 44-8706. Act; termination.

44-8701 Act, how cited.

Sections 44-8701 to 44-8706 shall be known and may be cited as the Nebraska Exchange Transparency Act.

Source: Laws 2013, LB384, § 1.
Termination date July 1, 2017.

44-8702 Purpose of act.

The purpose of the Nebraska Exchange Transparency Act is to provide state-based recommendations and transparency regarding the implementation and operation of an affordable insurance exchange, as required by the federal Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq., by creating the Nebraska Exchange Stakeholder Commission.

Source: Laws 2013, LB384, § 2.

Termination date July 1, 2017.

44-8703 Nebraska Exchange Stakeholder Commission; created; members; terms; vacancy; removal; hearing.

(1) The Nebraska Exchange Stakeholder Commission is created. For administrative and budgetary purposes only, the commission shall be housed within the Department of Insurance. The commission shall be composed of eleven members as follows:

(a) Nine members shall be appointed by the Governor in the following manner:

(i) Four members to represent the interests of consumers who will access health insurance in the exchange with at least one of such members to represent the interests of rural consumers who will access health insurance in the exchange;

(ii) One member to represent the interests of small businesses who are qualified to purchase health insurance in the exchange;

(iii) Two members to represent the interests of health care providers in the state;

(iv) One member to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange; and

(v) One member to represent the interests of health insurance agents. This member shall not be a captive agent of any health insurance carrier;

(b) The Director of Insurance or his or her designee is a nonvoting, ex officio member of the commission; and

(c) The director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee is a nonvoting, ex officio member of the commission.

(2) The terms of appointed members of the commission shall commence on July 1, 2013.

(3) The appointed members of the commission shall serve for terms of four years, except that of the members first appointed, the Governor shall designate:

(a) One of the members representing the interests of health care providers in the state to serve a term of three years and the other to serve a term of two years;

(b) The member representing the interests of health insurance carriers to serve a term of two years;

(c) The member representing the interests of health insurance agents to serve a term of three years; and

(d) All other members to serve for terms of four years.

(4) A member may be reappointed at the expiration of his or her term. All succeeding appointments to the commission shall be made in the same manner

as the original appointments are made, and succeeding appointees shall have the same qualifications as their predecessors.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member such individual succeeds and shall be eligible for appointment to subsequent full terms thereafter.

(6) All appointments whether initial or subsequent shall be subject to the approval of a majority of the members of the Legislature, if the Legislature is in session, and, if the Legislature is not in session, any appointment shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(7) A member shall have his or her membership terminated if he or she ceases to meet the qualification for his or her appointment. A member may be removed from the commission for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 2013, LB384, § 3.

Termination date July 1, 2017.

44-8704 Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.

(1) The Nebraska Exchange Stakeholder Commission shall organize by selecting a chairperson and a vice-chairperson who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

(2) The commission shall hold at least four meetings annually, at times and places fixed by the chairperson.

(3) A majority of the members of the commission shall constitute a quorum.

(4) Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2013, LB384, § 4.

Termination date July 1, 2017.

44-8705 Nebraska Exchange Stakeholder Commission; duties.

The Nebraska Exchange Stakeholder Commission shall:

(1) Work with state and federal agencies and policymakers to provide recommendations regarding implementation and operation of the exchange, including, but not limited to:

(a) Improving access to high-quality, affordable health coverage options and improving policies and processes on the exchange to ensure a positive and seamless consumer experience;

(b) Promoting competitiveness of the exchange, minimizing administrative burden for issuers, and ensuring consumer protections;

(c) Incorporating existing state policies, capabilities, and infrastructure that can also assist in exchange implementation and operations;

(d) Ensuring the effectiveness of the navigator grant program;

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(e) Promoting a seamless integration with the medicaid program and continuity of care for those transitioning between publicly funded coverage and private coverage; and

(f) Ensuring the small business health options program or SHOP Exchange meets the needs and provides value to small businesses;

(2) Create technical and advisory groups as needed to discuss issues related to the exchange and make recommendations to the commission, state or federal agencies, and the Legislature;

(3) Assist the exchange in meeting the stakeholder consultation requirements established in 45 C.F.R. 155.130, as such regulations existed on January 1, 2013;

(4) Identify challenges and problems in the implementation and operation of the exchange and prepare recommendations to alleviate the problems identified; and

(5) Provide a report on or before December 1, 2013, and each December 1 thereafter, to the Governor and the Legislature concerning the implementation and operation of the exchange, challenges and problems identified in the implementation and operation of the exchange, and recommendations to address such problems and challenges. The report to the Legislature shall be submitted electronically.

Source: Laws 2013, LB384, § 5.
Termination date July 1, 2017.

44-8706 Act; termination.

The Nebraska Exchange Transparency Act terminates on July 1, 2017.

Source: Laws 2013, LB384, § 6.
Termination date July 1, 2017.

ARTICLE 88

HEALTH INSURANCE EXCHANGE NAVIGATOR REGISTRATION ACT

Section

- 44-8801. Act, how cited.
- 44-8802. Terms, defined.
- 44-8803. Navigator; registration required; prohibited acts.
- 44-8804. Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.
- 44-8805. Registrations; term; renewal; application; fee; federal training and continuing education requirements.
- 44-8806. Navigator; individual with existing health insurance coverage; information.
- 44-8807. Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.
- 44-8808. Rules and regulations.

44-8801 Act, how cited.

Sections 44-8801 to 44-8808 shall be known and may be cited as the Health Insurance Exchange Navigator Registration Act.

Source: Laws 2013, LB568, § 1.

44-8802 Terms, defined.

For purposes of the Health Insurance Exchange Navigator Registration Act:

(1) Director means the Director of Insurance;

(2) Exchange means any health insurance exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services; and

(3) Navigator means any individual or entity, other than an insurance producer or consultant, that receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform the duties identified in 42 U.S.C. 18031(i)(3), as such section existed on January 1, 2013.

Source: Laws 2013, LB568, § 2.

44-8803 Navigator; registration required; prohibited acts.

(1) No individual or entity shall perform, offer to perform, or advertise any service as a navigator in this state unless registered as a navigator by the director.

(2) A navigator shall not:

(a) Engage in any activities that would require an insurance producer license;

(b) Violate section 44-4050;

(c) Recommend or endorse a particular health plan;

(d) Accept any compensation or consideration from an insurance company, broker, or consultant that is dependent, in whole or in part, on whether a person enrolls in or purchases a qualified health plan; or

(e) Fail to respond to any written inquiry from the director regarding the navigator's duties as a navigator or fail to request additional reasonable time to respond within fifteen working days.

Source: Laws 2013, LB568, § 3.

44-8804 Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.

(1) An individual applying for an individual navigator registration shall make application to the director on a form developed by the director which, unless preempted by federal law, is accompanied by the initial individual registration fee in an amount not to exceed twenty-five dollars as established by the director. The individual shall declare in the application under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has successfully passed an examination prescribed by an exchange established or operating in this state and has been authorized to act as a navigator; and

(c) Has identified any entity navigator with which he or she is affiliated and supervised.

(2) An entity applying for an entity navigator registration shall make application on a form developed by the director and which contains the information

prescribed by the director and which, unless preempted by federal law, is accompanied by the initial entity registration fee in an amount not to exceed fifty dollars as established by the director.

(3) The director may require any documents deemed necessary to verify the information contained in an application submitted in accordance with subsections (1) and (2) of this section.

(4) A registered navigator shall, in a manner prescribed by the director, notify the director within thirty days of any federal action that restricts or terminates the navigator's authorization to act as a navigator.

(5) A registered entity navigator shall, in a manner prescribed by the director, provide the director with a list of all individual navigators that it employs, supervises, or is affiliated with.

Source: Laws 2013, LB568, § 4.

44-8805 Registrations; term; renewal; application; fee; federal training and continuing education requirements.

(1) Individual and entity registrations shall expire one year after the date of issuance.

(2) An individual navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed twenty-five dollars as established by the director, and an entity navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed fifty dollars as established by the director. An individual navigator who fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director, and an entity navigator that fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director.

(3) Any failure to fulfill the federal ongoing training and continuing education requirements shall result in the expiration of the registration.

Source: Laws 2013, LB568, § 5.

44-8806 Navigator; individual with existing health insurance coverage; information.

On contact with an individual who acknowledges having existing health insurance coverage obtained through a licensed insurance producer, a navigator shall make a reasonable effort to inform the individual that he or she may, but is not required to, seek further assistance from that producer or another licensed producer for information, assistance, and any other services and that tax credits may not be available to offset the premium cost of plans that are marketed outside of the exchange.

Source: Laws 2013, LB568, § 6.

44-8807 Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.

(1) The director, after notice and hearing, may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator registration for violation of the Health Insurance Exchange Navigator Registration Act.

(2) Except as otherwise provided by law, the director may examine and investigate the business affairs and records of any navigator as such business affairs and records regard the navigator's duties as a navigator to determine whether the navigator has engaged or is engaging in any violation of the act.

(3) An entity navigator registration may be suspended or revoked or renewal or reinstatement thereof may be refused if the director finds, after notice and hearing, that an individual navigator's violation was known by the employing or supervising entity navigator and the violation was not reported to the director and no corrective action was undertaken.

Source: Laws 2013, LB568, § 7.

44-8808 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Health Insurance Exchange Navigator Registration Act.

Source: Laws 2013, LB568, § 8.

ARTICLE 89

STANDARD VALUATION ACT

Section

- 44-8901. Act, how cited.
- 44-8902. Applicability of act.
- 44-8903. Terms, defined.
- 44-8904. Director; valuation of reserves; duties; powers.
- 44-8905. Company; opinion of actuary; contents; standards; liability; confidentiality; director; powers; release of material; when.
- 44-8906. Minimum standard of valuation; applicability to contracts; when.
- 44-8907. Life insurance; standards of valuation; policies issued on or after operative date of law; reserves required.
- 44-8908. Valuation manual; director prescribe; designate operative date; when effective; contents; director; powers.
- 44-8909. Reserves; company; duties.
- 44-8910. Company; submit data.
- 44-8911. Confidential information; how treated; director; powers; release of material; when.
- 44-8912. Director; exempt specific product forms or product lines; provisions applicable.

44-8901 Act, how cited.

Sections 44-8901 to 44-8912 shall be known and may be cited as the Standard Valuation Act.

Source: Laws 2014, LB755, § 1.
Effective date July 18, 2014.

44-8902 Applicability of act.

Except as provided in sections 44-8905, 44-8906, and 44-8907, the Standard Valuation Act applies to those policies and contracts issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908.

Source: Laws 2014, LB755, § 2.
Effective date July 18, 2014.

44-8903 Terms, defined.

For the purposes of the Standard Valuation Act:

(1) Accident and health insurance contract means a contract that incorporates morbidity risk and provides protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual;

(2) Appointed actuary means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in sections 44-421 to 44-425 and 44-8905;

(3) Company means an entity which has (a) written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim or (b) written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state;

(4) Deposit-type contract means a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual;

(5) Director means the Director of Insurance;

(6) Life insurance contract means a contract that incorporates mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;

(7) Policyholder behavior means any action a policyholder, a contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to the act including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) Principle-based valuation means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with section 44-8909 as specified in the valuation manual;

(9) Qualified actuary means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual;

(10) Reserves means reserve liabilities;

(11) Tail risk means a risk that occurs either when the frequency of low probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude; and

(12) Valuation manual means the valuation manual prescribed by the director which conforms substantially to the valuation manual developed and adopted by the National Association of Insurance Commissioners.

Source: Laws 2014, LB755, § 3.

Effective date July 18, 2014.

44-8904 Director; valuation of reserves; duties; powers.

The director shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, accident and health insurance contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the director may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in the Standard Valuation Act.

Source: Laws 2014, LB755, § 4.
Effective date July 18, 2014.

Cross References

For operative date of valuation manual, see section 44-8908.

44-8905 Company; opinion of actuary; contents; standards; liability; confidentiality; director; powers; release of material; when.

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual shall prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (1) of this section an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(3) Each opinion required by subsection (2) of this section shall be governed by the following provisions:

(a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director, shall be prepared to support each actuarial opinion; and

(b) If the company fails to provide a supporting memorandum at the request of the director within a period specified in the valuation manual or the director determines that the supporting memorandum provided by the company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the director.

(4) Every opinion shall be governed by the following provisions:

(a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the director;

(b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserves for each year ending on or after the operative date of the valuation manual;

(c) The opinion shall apply to all policies and contracts subject to subsection (2) of this section, plus other actuarial liabilities as may be specified in the valuation manual;

(d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor and on such additional standards as may be prescribed in the valuation manual;

(e) In the case of an opinion required to be submitted by a foreign or alien company, the director may accept the opinion filed by that company with the insurance supervisory official of another state if the director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person other than the insurance company and the director for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion; and

(g) Disciplinary action by the director against the company or the appointed actuary shall be as set forth in rules and regulations adopted and promulgated by the director.

(5)(a) Documents, materials, or other information in the possession or control of the director that are a memorandum in support of the opinion and any other material provided by the company to the director in connection with the memorandum shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. Neither the director nor any person who received documents, materials, or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information.

(b) In order to assist in the performance of the director's duties, the director:

(i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and

(ii) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign

or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

(c) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the director under this section or as a result of sharing information pursuant to this subsection.

(d) A memorandum in support of the opinion, and any other material provided by the company to the director in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by rules and regulations.

(e) The memorandum or other material may otherwise be released by the director with the written consent of the company or to the American Academy of Actuaries pursuant to a request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material.

(f) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

Source: Laws 2014, LB755, § 5.

Effective date July 18, 2014.

Cross References

For operative date of valuation manual, see section 44-8908.

44-8906 Minimum standard of valuation; applicability to contracts; when.

For accident and health insurance contracts issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 44-8904. For disability and sickness and accident insurance contracts issued on or after the operative date defined in section 44-407.07 and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted and promulgated by the director by rule and regulation.

Source: Laws 2014, LB755, § 6.

Effective date July 18, 2014.

44-8907 Life insurance; standards of valuation; policies issued on or after operative date of law; reserves required.

(1) This section shall apply to only those policies and contracts issued on or after the operative date defined in section 44-407.07 (the Standard Nonforfeiture Law for Life Insurance), except as otherwise provided in subsection (3) of this section for all annuities and pure endowments purchased on or after the operative date of such subsection (3) under group annuity and pure endowment contracts issued prior to such operative date defined in section 44-407.07. This section shall apply to all policies and contracts issued prior to the operative

date of the valuation manual designated in subsection (2) of section 44-8908, and sections 44-8908 and 44-8909 shall not apply to any such policies and contracts.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to August 30, 1981, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (3) and (4) of this section, the minimum standard for the valuation of all such policies and contracts shall be the Commissioners Reserve Valuation Methods defined in subsections (5), (6), and (9) of this section; five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the cases of policies and contracts, other than annuity and pure endowment contracts, issued on or after September 2, 1973, four percent interest for such policies issued prior to August 24, 1979, and four and one-half percent interest for such policies issued on or after August 24, 1979; and the following tables: (a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of section 44-407.08 (Standard Nonforfeiture Law for Life Insurance), the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date and prior to the operative date of section 44-407.24, except that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies on or after the operative date of section 44-407.24 (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of section 44-407.09 (Standard Nonforfeiture Law for Life Insurance), and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; (c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Department of Insurance; (d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the Group Annuity Mortality Table for 1951, any modification of such table approved by the Department of Insurance, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure

endowment contracts; (e) for total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies; (f) for accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; and (g) for group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the Department of Insurance.

(3) Except as provided in subsection (4) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioners Reserve Valuation Methods defined in subsections (5) and (6) of this section and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to August 24, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Department of Insurance, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts;

(b) For individual single premium immediate annuity contracts issued on or after August 24, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and seven and one-half percent interest;

(c) For individual annuity and pure endowment contracts issued on or after August 24, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such contracts, or

any modification of these tables approved by the director, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts;

(d) For all annuities and pure endowments purchased prior to August 24, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Department of Insurance, and six percent interest; and

(e) For all annuities and pure endowments purchased on or after August 24, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the director, and seven and one-half percent interest.

(4)(a) The calendar year statutory valuation interest rates as defined in this subsection shall be used in determining the minimum standard for the valuation of all life insurance policies issued in a particular calendar year, on or after the operative date of section 44-407.02; all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1 of the calendar year next following August 30, 1981; all annuities and pure endowments purchased in a particular calendar year on or after January 1 of the calendar year next following August 30, 1981, under group annuity and pure endowment contracts; and the net increase, if any, in a particular calendar year after January 1 of the calendar year next following August 30, 1981, in amounts held under guaranteed interest contracts.

(b)(i) The calendar year statutory valuation interest rates shall be determined as provided in subdivision (4)(b)(i) of this section and the results rounded to the nearer one-quarter of one percent: (A) For life insurance, the calendar year statutory valuation interest rate shall be equal to the sum of (I) three percent; (II) the weighting factor defined in this subsection multiplied by the difference between the lesser of the reference interest rate defined in this subsection and nine percent, and three percent; and (III) one-half the weighting factor defined in this subsection multiplied by the difference between the greater of the reference interest rate defined in this subsection and nine percent, and nine percent. (B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, the calendar year statutory valuation interest rates shall be equal to the sum of (I) three percent and (II) the weighting factor defined in this subsection multiplied by the difference between the reference interest rate defined in this subsection and three percent. (C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subdivision (4)(b)(i)(B) of this section, the formula for life insurance in subdivision (4)(b)(i)(A) of this section shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply to annuities and guaranteed

interest contracts with guarantee duration of ten years or less. (D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply. (E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply. (F) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 44-407.24 becomes operative.

(ii) The weighting factors referred to in the formulas stated in this subsection are as follows: (A) For life insurance, with a guarantee duration of ten years or less, the weighting factor is .50; with a guarantee duration of more than ten years but not more than twenty years, the weighting factor is .45; and with a guarantee duration of more than twenty years, the weighting factor is .35. For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy. (B) The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80. (C) The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision (4)(b)(ii)(B) of this section, are as follows, according to plan type as defined in this subdivision: (I) For annuities and guaranteed interest contracts valued on an issue-year basis with a guarantee duration of five years or less, the weighting factor is .80 for plan type A, .60 for plan type B, and .50 for plan type C; with a guarantee duration of more than five years but not more than ten years, the weighting factor is .75 for plan type A, .60 for plan type B, and .50 for plan type C; with a guarantee duration of more than ten years but not more than twenty years, the weighting factor is .65 for plan type A, .50 for plan type B, and .45 for plan type C; and with more than twenty years guarantee duration the weighting factor is .45 for plan type A, .35 for plan type B, and .35 for plan type C. (II) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase, the weighting factors are the factors shown in subdivision (4)(b)(ii)(C)(I) of this section increased by .05 for all plan types. (III) For annuities and guaranteed interest contracts valued on a change in fund basis, the weighting factors are the factors as computed in subdivision (4)(b)(ii)(C)(II) of this section increased by .10 for plan type A, increased by .20 for plan type B, and not increased for plan type C.

(IV) For annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the weighting factors are the factors as computed in subdivision (4)(b)(ii)(C)(III) of this section increased by .05 for all plan types. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(c) Plan types used in this subsection are defined as follows: Under plan type A, at any time a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, without such an adjustment but in installments over five years or more, or as an immediate life annuity, or no withdrawal may be permitted. Under plan type B, before expiration of the interest rate guarantee, a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or without such an adjustment but in installments over five years or more, or no withdrawal may be permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years. Under plan type C, a policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either without an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(d) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this subsection, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(e) The reference interest rate referred to in this subsection shall be defined as follows: (i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the reference monthly average as defined in this subsection. (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts

with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the reference monthly average as defined in this subsection. (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (4)(e)(ii) of this section, with guarantee duration in excess of ten years the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (4)(e)(ii) of this section, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision (4)(e)(ii) of this section, the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the reference monthly average as defined in this subsection.

(f) The reference monthly average referred to in this subsection shall mean a monthly bond yield average which is published by a national financial statistical organization, recognized by the National Association of Insurance Commissioners, in current general use in the insurance industry, and designated by the Director of Insurance. In the event that the National Association of Insurance Commissioners determines that an alternative method for determination of the reference interest rate is necessary, an alternative method, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the Department of Insurance, may be substituted.

(5)(a) Except as otherwise provided in subsections (6) and (9) of this section and section 44-8906, reserves according to the Commissioners Reserve Valuation Methods, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (i) over (ii), as follows: (i) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due, except that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year

higher than the age at issue of such policy; (ii) a net one year term premium for such benefits provided for in the first policy year.

(b) For any life insurance policy issued on or after January 1 of the fourth calendar year commencing after August 30, 1981, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the Commissioners Reserve Valuation Methods as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (9) of this section, be the greater of the reserve as of such policy anniversary calculated as described in subdivision (5)(a) of this section, and the reserve as of such policy anniversary calculated as described in subdivision (5)(a) of this section but with (i) the net level annual premium calculated as described in subdivision (5)(a) of this section being reduced by fifteen percent of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (2) and (4) of this section shall be used.

(c) Reserves according to the Commissioners Reserve Valuation Methods for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(6) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future

guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations shall be the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(7)(a) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (5), (6), (9), and (10) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(b) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by sections 44-420 to 44-427.

(8)(a) Reserves for all policies and contracts issued prior to August 30, 1981, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(b) Reserves for any category of policies, contracts, or benefits as established by the Department of Insurance, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard provided under the Standard Valuation Act, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(c) A company which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under the Standard Valuation Act may adopt a lower standard of valuation with the approval of the director, but not lower than the minimum standard provided under the act. For the purposes of this subdivision, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by section 44-8905 shall not be deemed to be the adoption of a higher standard of valuation.

(9) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract, but using the minimum valuation standards of mortality and rate of interest and replac-

ing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (2) and (4) of this section.

For any life insurance policy issued on or after January 1 of the fourth calendar year commencing after August 30, 1981, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (5) of this section, ignoring subdivision (5)(b) of this section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (5) of this section, including subdivision (5)(b) of this section, and the minimum reserve calculated in accordance with this subsection.

(10) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (5), (6), and (9) of this section, the reserves which are held under any such plan must (a) be appropriate in relation to the benefits and the pattern of premiums for that plan, and (b) be computed by a method which is consistent with the principles of this section as determined by regulations promulgated by the Department of Insurance.

Source: Laws 1913, c. 154, § 94, p. 437; R.S.1913, § 3231; Laws 1919, c. 190, tit. V, art. VI, § 2, p. 618; C.S.1922, § 7830; C.S.1929, § 44-502; Laws 1943, c. 106, § 1(3), p. 356; R.S.1943, § 44-404; Laws 1959, c. 205, § 1, p. 715; Laws 1961, c. 221, § 2, p. 655; Laws 1963, c. 266, § 2, p. 796; Laws 1965, c. 262, § 1, p. 732; Laws 1967, c. 270, § 1, p. 730; Laws 1973, LB 309, § 2; Laws 1979, LB 354, § 2; Laws 1981, LB 355, § 1; Laws 1993, LB 121, § 224; Laws 1995, LB 574, § 43; R.S.1943, (2010), § 44-404; Laws 2014, LB755, § 7.
Effective date July 18, 2014.

Cross References

For determination of operative date, see section 44-407.23.

Mortality tables, see Appendix.

44-8908 Valuation manual; director prescribe; designate operative date; when effective; contents; director; powers.

(1) For policies issued on or after the operative date of the valuation manual designated in subsection (2) of this section, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 44-8905 except as provided under subsections (5) and (7) of this section.

(2) The director shall prescribe the valuation manual no later than July 1, 2017. The director shall designate the operative date of the valuation manual as

of January 1 after the date on which the director prescribes the valuation manual.

(3) Unless a change in the valuation manual specifies a later effective date, the changes adopted by the director to the valuation manual shall be effective on January 1 following the adoption of the change by the director.

(4) The valuation manual must specify all of the following:

(a) Minimum valuation standards for and definitions of the policies or contracts subject to section 44-8904. Such minimum valuation standards shall be:

(i) The director's reserve valuation method for life insurance contracts, other than annuity contracts, subject to section 44-8904;

(ii) The director's annuity reserve valuation method for annuity contracts subject to section 44-8904; and

(iii) Minimum reserves for all other policies or contracts subject to section 44-8904;

(b) Which policies or contracts or types of policies or contracts are subject to the requirements of a principle-based valuation in subsection (1) of section 44-8909 and the minimum valuation standards consistent with those requirements;

(c) For policies and contracts subject to a principle-based valuation under section 44-8909:

(i) Requirements for the format of reports to the director under subdivision (2)(c) of section 44-8909 which shall include information necessary to determine if the valuation is appropriate and in compliance with the Standard Valuation Act;

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;

(d) For policies not subject to a principle-based valuation under section 44-8909, the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual designated in subsection (2) of this section; or

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(e) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls; and

(f) The data and form of the data required under section 44-8910 and with whom the data must be submitted.

The valuation manual may specify other requirements, including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the director, in compliance with the act, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the director by rule and regulation.

(6) The director may employ or contract with a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company or to review and opine on a company's compliance with any requirement set forth in the act. The director may rely upon the opinion, regarding provisions contained within the act, of a qualified actuary engaged by the insurance commissioner of another state, district, or territory of the United States.

(7) The director may require a company to change any assumption or method that in the opinion of the director is necessary in order to comply with the requirements of the valuation manual or the act and the company shall adjust the reserves as required by the director. The director may take other disciplinary action pursuant to law.

Source: Laws 2014, LB755, § 8.
Effective date July 18, 2014.

44-8909 Reserves; company; duties.

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(a) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the valuation must reflect conditions appropriately adverse to quantify the tail risk;

(b) Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(c) Incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; or

(ii) For assumptions that are not prescribed, the assumptions shall:

(A) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(B) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience; and

(d) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(a) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;

(b) Provide to the director and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year; and

(c) Develop, and file with the director upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

Source: Laws 2014, LB755, § 9.
Effective date July 18, 2014.

44-8910 Company; submit data.

A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

Source: Laws 2014, LB755, § 10.
Effective date July 18, 2014.

44-8911 Confidential information; how treated; director; powers; release of material; when.

(1) For purposes of this section, confidential information means:

(a) A memorandum in support of an opinion submitted under section 44-8905 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such memorandum;

(b) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in the course of an examination made under subsection (6) of section 44-8908, except that if an examination report or other material prepared in connection with an examination made under the Insurers Examination Act is not held as private and confidential information under the act, an examination report or other material prepared in connection with an examination made under subsection (6) of section 44-8908 shall not be confidential information to the same extent as if such examination report or other material had been prepared under the Insurers Examination Act;

(c) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under subdivision (2)(b) of section 44-8909 evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such reports, documents, materials, and other information;

(d) Any principle-based valuation report developed under subdivision (2)(c) of section 44-8909 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such report; and

(e) Any data, documents, materials, and other information submitted by a company under section 44-8910, known as experience data, and any other data, documents, materials, and information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, known as experience materials, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the director and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such experience data and experience materials.

(2)(a) Except as provided in this section, a company's confidential information is confidential by law and privileged and shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, except that the director may use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the director's official duties.

(b) Neither the director nor any person who received confidential information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the director's duties, the director may share confidential information (i) with other state, federal, and international regulatory agencies and with the National Association of Insurance Commissioners and its affiliates and subsidiaries and (ii) in the case of confidential information specified in subdivisions (1)(a) and (b) of this section, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings. The recipient must agree, and must have the legal authority to agree, to maintain the confidentiality and privileged status of such data, documents, materials, and other information in the same manner and to the same extent as required for the director.

(d) The director may receive data, documents, materials, and other information, including otherwise confidential and privileged data, documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials

of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any data, document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the data, document, material, or other information.

(e) The director may enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (2)(c) of this section.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under subsection (2) of this section shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Regulatory agency, law enforcement agency, and the National Association of Insurance Commissioners include employees, agents, consultants, and contractors of such entities.

(3) Notwithstanding subsection (2) of this section, any confidential information specified in subdivisions (1)(a) and (d) of this section:

(a) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under section 44-8905 or principle-based valuation report developed under subdivision (2)(c) of section 44-8909 by reason of an action required by the Standard Valuation Act or by rule and regulation;

(b) May otherwise be released by the director with the written consent of the company; and

(c) Once any portion of a memorandum in support of an opinion submitted under section 44-8905 or a principle-based valuation report developed under subdivision (2)(c) of section 44-8909 is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

Source: Laws 2014, LB755, § 11.
Effective date July 18, 2014.

Cross References

Insurers Examination Act, see section 44-5901.

44-8912 Director; exempt specific product forms or product lines; provisions applicable.

(1) The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of section 44-8908 if:

(a) The director has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(b) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908 in addition to any requirements established by the director and by rule and regulation.

(2) For any company granted an exemption under this section, sections 44-420 to 44-427, 44-8906, and 44-8907 shall be applicable. With respect to any company applying this exemption, any reference to section 44-8908 found in such sections shall not be applicable.

Source: Laws 2014, LB755, § 12.
Effective date July 18, 2014.

ARTICLE 90

RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

Section

- 44-9001. Act, how cited.
- 44-9002. Purposes of act; applicability.
- 44-9003. Legislative findings and declaration.
- 44-9004. Terms, defined.
- 44-9005. Risk management framework.
- 44-9006. Own risk and solvency assessment.
- 44-9007. Own risk and solvency assessment summary report; submission; contents; similar report accepted; when.
- 44-9008. Act; exemptions; waiver; director; considerations; director; powers.
- 44-9009. Own risk and solvency assessment summary report; documentation and supporting information.
- 44-9010. Confidentiality; director; powers; sharing and use of information; written agreement; contents.
- 44-9011. Failure to file own risk and solvency assessment summary report; penalty.

44-9001 Act, how cited.

Sections 44-9001 to 44-9011 shall be known and may be cited as the Risk Management and Own Risk and Solvency Assessment Act.

Source: Laws 2014, LB700, § 1.
Operative date January 1, 2015.

44-9002 Purposes of act; applicability.

(1) The purposes of the Risk Management and Own Risk and Solvency Assessment Act are to provide requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instructions for filing an own risk and solvency assessment summary report with the director.

(2) The requirements of the act apply to all insurers domiciled in this state unless exempt pursuant to section 44-9008.

Source: Laws 2014, LB700, § 2.
Operative date January 1, 2015.

44-9003 Legislative findings and declaration.

The Legislature finds and declares that the own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks that is material and

relevant to the insurer or insurance group filing the report. The information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the Legislature that the own risk and solvency assessment summary report shall be a confidential document filed with the director, that the own risk and solvency assessment summary report shall be shared only as provided in the Risk Management and Own Risk and Solvency Assessment Act and to assist the director in the performance of his or her duties, and that in no event shall the own risk and solvency assessment summary report be subject to public disclosure.

Source: Laws 2014, LB700, § 3.
Operative date January 1, 2015.

44-9004 Terms, defined.

For purposes of the Risk Management and Own Risk and Solvency Assessment Act:

- (1) Director means the Director of Insurance;
- (2) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in subdivision (5) of section 44-2121;
- (3) Insurer has the same meaning as in section 44-103, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;
- (4) Own risk and solvency assessment means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;
- (5) Own risk and solvency assessment guidance manual means the own risk and solvency assessment guidance manual prescribed by the director which conforms substantially to the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners. A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the change has been adopted by the director; and
- (6) Own risk and solvency assessment summary report means a confidential, high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Source: Laws 2014, LB700, § 4.
Operative date January 1, 2015.

44-9005 Risk management framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement is satisfied if the insurance group of which

the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Source: Laws 2014, LB700, § 5.
Operative date January 1, 2015.

44-9006 Own risk and solvency assessment.

Subject to section 44-9008, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Source: Laws 2014, LB700, § 6.
Operative date January 1, 2015.

44-9007 Own risk and solvency assessment summary report; submission; contents; similar report accepted; when.

(1) Upon the director's request, and no more than once each year, an insurer shall submit to the director an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual applicable to the insurer or the insurance group of which the insurer is a member. Notwithstanding any request from the director, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection if the director is the lead state insurance commissioner of the insurance group.

(2) The report shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer may comply with subsection (1) of this section by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the insurance commissioner of another state or to a supervisor or regulator of a foreign jurisdiction if that report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

(4) The first filing of the own risk and solvency assessment summary report shall be in 2015.

Source: Laws 2014, LB700, § 7.
Operative date January 1, 2015.

44-9008 Act; exemptions; waiver; director; considerations; director; powers.

(1) An insurer shall be exempt from the requirements of the Risk Management and Own Risk and Solvency Assessment Act if:

(a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than five hundred million dollars; and

(b) The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than one billion dollars.

(2) If an insurer qualifies for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision (1)(b) of this section, then the own risk and solvency assessment summary report required pursuant to section 44-9007 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one own risk and solvency assessment summary report for any combination of insurers if the combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member qualifies for exemption pursuant to subdivision (1)(b) of this section, then the only own risk and solvency assessment summary report required pursuant to section 44-9007 shall be the report applicable to that insurer.

(4) An insurer that does not qualify for exemption pursuant to subsection (1) of this section may apply to the director for a waiver from the requirements of the act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the director may consider the type and volume of business written, ownership and organizational structure, and any other factor the director considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the director shall coordinate with the lead state insurance commissioner and with the other domiciliary insurance commissioners in considering whether to grant the insurer's request for a waiver.

(5) Notwithstanding the exemptions stated in this section:

(a) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

(b) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has risk-based capital for a company action level event as set forth in section 44-6016, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer as determined by the director.

(6) If an insurer that qualified for an exemption pursuant to subsection (1) of this section no longer qualifies for that exemption due to changes in premium

as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year after the year the threshold is exceeded to comply with the requirements of the act.

Source: Laws 2014, LB700, § 8.

Operative date January 1, 2015.

44-9009 Own risk and solvency assessment summary report; documentation and supporting information.

(1) An own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to the requirements of subsection (2) of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

(2) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

Source: Laws 2014, LB700, § 9.

Operative date January 1, 2015.

44-9010 Confidentiality; director; powers; sharing and use of information; written agreement; contents.

(1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession or control of the director that are obtained by, created by, or disclosed to the director or any other person under the Risk Management and Own Risk and Solvency Assessment Act, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(2) Neither the director nor any person who received documents, materials, or other own risk and solvency assessment related information through examination or otherwise while acting under the authority of the director or with whom such documents, materials, or other information are shared pursuant to the act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials, or other own risk and solvency assessment information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section,

including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college under section 44-2137.01, with the National Association of Insurance Commissioners, and with any third-party consultants designated by the director, if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or other own risk and solvency assessment information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret documents and materials, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college under section 44-2137.01, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The director shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to the act that:

(a) Specifies procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(b) Specifies that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act remains with the director and that the National Association of Insurance Commissioners' or a third-party consultant's use of the information is subject to the direction of the director;

(c) Prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to the act in a permanent data base after the underlying analysis is completed;

(d) Requires prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(e) Requires the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act; and

(f) As part of the retention process, requires a third-party consultant to verify to the director, with notice to the insurer, that it is free of any conflict of interest and that it has internal procedures in place to monitor compliance with any conflicts and to comply with the act's confidentiality standards and requirements. The retention agreement with a third-party consultant shall require prior written consent of the insurer before making public any information provided pursuant to the act as required in subsection (1) of this section.

(5) The sharing of information and documents by the director pursuant to the act shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of the provisions of the act.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other own risk and solvency assessment information shall occur as a result of disclosure of such documents, materials, or other information to the director under this section or as a result of sharing as authorized in the act.

(7) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Source: Laws 2014, LB700, § 10.

Operative date January 1, 2015.

44-9011 Failure to file own risk and solvency assessment summary report; penalty.

Any insurer failing, without just cause, to timely file its own risk and solvency assessment summary report as required in the Risk Management and Own Risk and Solvency Assessment Act shall be required, after notice and hearing, to pay a penalty of not to exceed two hundred dollars for each day's delay. The maximum penalty under this section is ten thousand dollars. The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer. The director shall remit any penalties collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2014, LB700, § 11.

Operative date January 1, 2015.



CHAPTER 45

INTEREST, LOANS, AND DEBT

Article.

1. Interest Rates and Loans.
 - (f) Loan Brokers. 45-189 to 45-191.10.
3. Installment Sales. 45-334 to 45-355.
6. Collection Agencies. 45-621.
7. Residential Mortgage Licensing. 45-701 to 45-742.01.
9. Delayed Deposit Services Licensing Act. 45-901 to 45-930.
10. Nebraska Installment Loan Act. 45-1002 to 45-1024.
12. Nebraska Construction Prompt Pay Act. 45-1201 to 45-1211.

ARTICLE 1

INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section

- 45-189. Loan brokers; legislative findings.
45-190. Terms, defined.
45-191.10. Persons exempt.

(f) LOAN BROKERS

45-189 Loan brokers; legislative findings.

The Legislature finds that:

(1) Many professional groups are presently licensed or otherwise regulated by the State of Nebraska in the interest of public protection;

(2) Certain questionable business practices, such as the collection of an advance fee prior to the performance of the service, misleads the public;

(3) Such practices are avoided by many professional groups and many professional groups are regulated by the state to restrict practices which tend to mislead or deceive the public;

(4) Loan brokers in Nebraska have engaged in the practice of collecting an advance fee from borrowers in consideration for attempting to procure a loan of money;

(5) Such practice, as well as others, by loan brokers has led the public to believe that the loan broker has agreed to procure a loan for the borrower when in fact the loan broker has merely promised to attempt to procure a loan; and

(6) Regulation of loan brokers by the state, in similar fashion to that of other professions, is necessary in order to protect the public welfare and to promote the use of fair and equitable business practices.

Source: Laws 1981, LB 154, § 1; Laws 2011, LB75, § 2.

45-190 Terms, defined.

For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5)(a) Loan broker means any person who:

(i) For or in expectation of consideration from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(ii) For or in expectation of consideration from a borrower, assists a borrower in making an application to obtain a loan of money;

(iii) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(iv) Holds himself or herself out, through advertising, signs, or other means, as a loan broker; and

(b) Loan broker does not include: (i) A bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, or credit union which is subject to regulation or supervision under the laws of the United States or any state; (ii) a mortgage banker or installment loan company licensed or registered under the laws of the State of Nebraska; (iii) a credit card company; (iv) an insurance company authorized to conduct business under the laws of the State of Nebraska; or (v) a lender approved by the Federal Housing Administration or the United States Department of Veterans Affairs, if the loan is secured or covered by guarantees, commitments, or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Source: Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16; Laws 2011, LB75, § 3; Laws 2013, LB279, § 1.

45-191.10 Persons exempt.

The following persons are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, certified public accountant, or investment adviser.

Source: Laws 1993, LB 270, § 12; Laws 1995, LB 599, § 12; Laws 2013, LB279, § 2.

ARTICLE 3
INSTALLMENT SALES

Section

- 45-334. Act, how cited.
45-335. Terms, defined.
45-336. Installment contract; requirements.
45-345. License; requirement; exception.
45-346. License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required.
45-346.01. Licensee; move of place of business; maintain minimum net worth; bond.
45-348. License; renewal; licensee; duties; fee; voluntary surrender of license.
45-351. Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.
45-354. Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; duties; department; duties.
45-355. Nationwide Mortgage Licensing System and Registry; information sharing; director; powers.

45-334 Act, how cited.

Sections 45-334 to 45-355 shall be known and may be cited as the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 1, p. 756; Laws 1994, LB 979, § 11; Laws 2007, LB124, § 31; Laws 2012, LB965, § 1.

45-335 Terms, defined.

For purposes of the Nebraska Installment Sales Act, unless the context otherwise requires:

(1) Goods means all personal property, except money or things in action, and includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services means work, labor, and services of any kind performed in conjunction with an installment sale but does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, debt cancellation contract, debt suspension contract, electronic title and lien services, guaranteed asset protection waiver, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company means a person purchasing one or more installment contracts from one or more sellers. Sales finance company includes, but is not limited to, a financial institution or installment loan licensee, if so engaged;

(12) Department means the Department of Banking and Finance;

(13) Director means the Director of Banking and Finance;

(14) Financial institution has the same meaning as in section 8-101;

(15) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(16) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan

documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(17) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(18) Licensee means any person who obtains a license under the Nebraska Installment Sales Act;

(19) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity;

(20) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries; and

(21) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries.

Source: Laws 1965, c. 266, § 1, p. 751; Laws 1965, c. 268, § 2, p. 757; Laws 1969, c. 379, § 1, p. 1340; Laws 1969, c. 380, § 1, p. 1343; Laws 1969, c. 381, § 1, p. 1345; Laws 1973, LB 455, § 1; Laws 1978, LB 373, § 1; Laws 1989, LB 94, § 1; Laws 1989, LB 681, § 16; Laws 1992, LB 269, § 1; Laws 2003, LB 217, § 34; Laws 2006, LB 876, § 25; Laws 2010, LB571, § 8; Laws 2011, LB77, § 1; Laws 2012, LB965, § 2.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-336 Installment contract; requirements.

(1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed, except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the buyer's downpayment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of any goods traded in; (c) the difference between subdivisions (a) and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the amount included for a debt cancellation contract or a debt suspension contract if the debt cancellation contract or debt suspension contract is a contract of a financial institution or licensee, such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part, and a separate charge is made therefor; (f) the amount included for electronic title and lien services other than fees and charges prescribed by law which actually

are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction; (g) the basic time price, which is the sum of subdivisions (c), (d), (e), and (f) of this subsection; (h) the time-price differential; (i) the amount of the time-price balance, which is the sum of subdivisions (g) and (h) of this subsection, payable in installments by the buyer to the seller; (j) the number, amount, and due date or period of each installment; (k) the time-sales price; and (l) the amount included for a guaranteed asset protection waiver.

(2) The contract shall contain substantially the following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) If a seller proffers an installment contract as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the contract if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the installment contract or in a separate document, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the installment contract, including a sales finance company, shall not be allowed to change such date.

(5) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(6) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and mark canceled and return to the buyer the original agreement or copy thereof or instruments or copies thereof signed by the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Source: Laws 1965, c. 268, § 3, p. 758; Laws 1994, LB 979, § 12; Laws 1994, LB 980, § 3; Laws 1999, LB 396, § 28; Laws 2006, LB 876, § 26; Laws 2010, LB571, § 9; Laws 2011, LB77, § 2.

45-345 License; requirement; exception.

(1) No person shall act as a sales finance company in this state without obtaining a license therefor from the department as provided in the Nebraska Installment Sales Act whether or not such person maintains an office, place of

doing business, or agent in this state, unless such person meets the requirements of section 45-340.

(2) No financial institution or installment loan licensee authorized to do business in this state shall be required to obtain a license under the act but shall comply with all of the other provisions of the act.

(3) A seller who does not otherwise act as a sales finance company shall not be required to obtain a license under the act but shall comply with all of the other provisions of the act in order to charge the time-price differential allowed by section 45-338.

Source: Laws 1965, c. 268, § 12, p. 763; Laws 1973, LB 39, § 4; Laws 1996, LB 1053, § 10; Laws 2003, LB 131, § 28; Laws 2003, LB 217, § 36; Laws 2012, LB965, § 3.

45-346 License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required.

(1) A license issued under the Nebraska Installment Sales Act is nontransferable and nonassignable. The same person may obtain additional licenses for each place of business operating as a sales finance company in this state upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the department a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354 shall be submitted along with each application.

(5) An initial license issued prior to October 1, 2012, shall remain in full force and effect until the next succeeding October 1. An initial license issued on or after October 1, 2012, and on or before December 31, 2012, shall remain in full force and effect until December 31, 2013. An initial license issued on or after January 1, 2013, shall remain in full force and effect until the next succeeding December 31. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act.

The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

(8) If a change of control of a licensee is proposed, a new application for a license shall be submitted to the department. Control in the case of a corporation means (a) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.

Source: Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34; Laws 2012, LB965, § 4.

45-346.01 Licensee; move of place of business; maintain minimum net worth; bond.

(1) A licensee may move its place of business from one place to another without obtaining a new license if the licensee gives written notice thereof to the director at least thirty days prior to such move.

(2) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee shall submit a copy of the annual audit to the director as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(3) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

Source: Laws 2007, LB124, § 35; Laws 2009, LB327, § 17; Laws 2012, LB965, § 5.

45-348 License; renewal; licensee; duties; fee; voluntary surrender of license.

(1) Except as provided in subsection (2) of this section, every licensee shall, on or before the first day of October, pay to the director a fee of one hundred fifty dollars for each license held as a license fee for the succeeding year and any processing fee allowed under subsection (2) of section 45-354 and submit such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit.

(2) Licenses which expire on October 1, 2012, shall be renewed until December 31, 2013, upon compliance with subsection (1) of this section. For such renewals, the fee shall be one and three-twelfths of the fees required under subsection (1) of this section. A license renewed on or after January 1, 2013, shall remain in full force and effect until the next succeeding December 31.

(3) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The department shall issue a notice of cancellation of the license following such surrender.

(4) If a licensee fails to renew its license and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

Source: Laws 1965, c. 268, § 15, p. 765; Laws 2005, LB 533, § 48; Laws 2009, LB327, § 18; Laws 2012, LB965, § 6.

45-351 Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.

(1) The department shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees shall be charged to the licensees as set forth in sections 8-605 and 8-606. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. The department shall remit fines collected under this subsection to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of

such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 18, p. 767; Laws 1994, LB 979, § 13; Laws 1997, LB 137, § 22; Laws 1999, LB 396, § 29; Laws 2004, LB 999, § 36; Laws 2007, LB124, § 37; Laws 2012, LB965, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

45-354 Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; duties; department; duties.

(1) Effective January 1, 2013, or within one hundred eighty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting licenses issued under the Nebraska Installment Sales Act, whichever is later, the department shall require such licensees under the act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but not be limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

- (i) Criminal history through fingerprint or other data bases;
- (ii) Civil or administrative records;
- (iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with precicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Installment Sales Act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to

collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-355.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2012, LB965, § 8.

45-355 Nationwide Mortgage Licensing System and Registry; information sharing; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to privilege or confidentiality under subdivision (a) of this subsection shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (a) of this

subsection that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2012, LB965, § 9.

ARTICLE 6 COLLECTION AGENCIES

Section

45-621. Nebraska Collection Agency Fund; created; use; investment; transfer.

45-621 Nebraska Collection Agency Fund; created; use; investment; transfer.

(1) All fees collected under the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The board may use the fund as may be necessary for the proper administration and enforcement of the act. The fund shall be paid out only on proper vouchers approved by the board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the board pursuant to the act shall be paid out of such fund. Transfers from the fund to the Election Administration Fund or the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Collection Agency Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) On or before July 5, 2013, the State Treasurer shall transfer one hundred thousand dollars from the Nebraska Collection Agency Fund to the Election Administration Fund.

Source: Laws 1963, c. 500, § 25, p. 1603; Laws 1971, LB 53, § 2; R.S.1943, (1981), § 81-8,182; Laws 1984, LB 471, § 21; Laws 1989, LB 206, § 3; Laws 1993, LB 261, § 19; Laws 1994, LB 1066, § 31; Laws 2001, LB 541, § 3; Laws 2013, LB199, § 21.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 7 RESIDENTIAL MORTGAGE LICENSING

Section

45-701. Act, how cited.

Section

- 45-702. Terms, defined.
- 45-703. Act; exemptions.
- 45-703.01. Nonprofit organization; certificate of exemption; qualification; application; denial; notice; appeal; department; powers; revocation of certificate; grounds.
- 45-706. License; issuance; denial; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.
- 45-727. Mortgage loan originator; license required; loan processor or underwriter; license required.
- 45-729. Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.
- 45-731. Written test requirement; subject areas.
- 45-734. Mortgage loan originator license; inactive status; duration; renewal; reactivation.
- 45-736. Unique identifier; use.
- 45-737. Mortgage banker; licensee; duties.
- 45-737.01. Mortgage loan originator; licensee; duties.
- 45-741. Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.
- 45-742. License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.
- 45-742.01. Mortgage banker or mortgage loan originator license; emergency orders authorized; grounds; notice; emergency hearing; judicial review; director; additional proceedings.

45-701 Act, how cited.

Sections 45-701 to 45-754 shall be known and may be cited as the Residential Mortgage Licensing Act.

Source: Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40; Laws 2009, LB328, § 3; Laws 2010, LB892, § 3; Laws 2012, LB965, § 10; Laws 2013, LB290, § 1.

45-702 Terms, defined.

For purposes of the Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does

not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

(6) Department means the Department of Banking and Finance;

(7) Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

(8) Director means the Director of Banking and Finance;

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

(16)(a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

(19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(21) Purchase-money mortgage means a mortgage issued to the borrower by the seller of the property as part of the purchase transaction;

(22) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

(23) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(24) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(25) Registrant means a person registered pursuant to section 45-704;

(26) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(27) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(28) Reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of section 45-702.01;

(29) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

(30) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

(31) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 121, § 274; Laws 1993, LB 217, § 1; Laws 1995, LB 163, § 2; Laws 1995, LB 384, § 17; Laws 1999, LB 396, § 30; Laws 2003, LB 131, § 29; Laws 2003, LB 218, § 1; Laws 2006, LB 876, § 28; Laws 2007, LB124, § 41; Laws 2008, LB851, § 19; Laws 2009, LB328, § 4; Laws 2010, LB892, § 4; Laws 2012, LB965, § 11.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.

Nebraska Installment Loan Act, see section 45-1001.

45-703 Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Residential Mortgage Licensing Act:

- (a) Any depository institution or wholly owned subsidiary thereof;
- (b) Any registered bank holding company;
- (c) Any insurance company that is subject to regulation by the Department of Insurance and is either (i) organized or chartered under the laws of Nebraska or (ii) organized or chartered under the laws of any other state if such insurance company has a place of business in Nebraska;
- (d) Any person licensed to practice law in this state in connection with activities that are (i) considered the practice of law by the Supreme Court, (ii) carried out within an attorney-client relationship, and (iii) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards;
- (e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is engaging in real estate brokerage activities unless such person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;
- (f) Any registered mortgage loan originator when acting for an entity described in subdivision (24)(a)(i), (ii), or (iii) of section 45-702;
- (g) Any sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business in any capacity other than as a purchaser or servicer of an installment contract, as defined in section 45-335, which is secured by a mobile home or trailer;
- (h) Any trust company chartered pursuant to the Nebraska Trust Company Act;
- (i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska;
- (j) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (k) Any individual who does not repetitively and habitually engage in the business of a mortgage banker, a mortgage loan originator, or a loan processor or underwriter, either inside or outside of this state, who (i) makes a residential mortgage loan with his or her own funds for his or her own investment, (ii) makes a purchase-money mortgage, or (iii) finances the sale of a dwelling or residential real estate owned by such individual without the intent to resell the residential mortgage loan;
- (l) Any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter;
- (m) The United States of America; the State of Nebraska; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency or division of any of the foregoing;
- (n) The Nebraska Investment Finance Authority;
- (o) Any individual who is an employee of an entity described in subdivision (m) or (n) of this subsection and who acts as a mortgage loan originator or loan

processor or underwriter only pursuant to his or her official duties as an employee of such entity;

(p) A bona fide nonprofit organization which has received a certificate of exemption pursuant to section 45-703.01; and

(q) Any employee of a bona fide nonprofit organization which has received a certificate of exemption pursuant to section 45-703.01 if such employee acts as a mortgage loan originator or mortgage loan processor or underwriter (i) only with respect to his or her work duties for the nonprofit organization and (ii) only with respect to residential mortgage loans with terms that are favorable to the borrower.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the Residential Mortgage Licensing Act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Source: Laws 1989, LB 272, § 6; Laws 1999, LB 396, § 31; Laws 2002, LB 957, § 22; Laws 2005, LB 533, § 50; Laws 2008, LB851, § 20; Laws 2009, LB328, § 5; Laws 2012, LB965, § 12.

Cross References

Nebraska Installment Sales Act, see section 45-334.

Nebraska Trust Company Act, see section 8-201.01.

45-703.01 Nonprofit organization; certificate of exemption; qualification; application; denial; notice; appeal; department; powers; revocation of certificate; grounds.

(1) A nonprofit organization may apply to the director for a certificate of exemption on a form as prescribed by the department. The director shall grant such certificate if the director finds that the nonprofit organization is a bona fide nonprofit organization. In order for a nonprofit organization to qualify as a bona fide nonprofit organization, the director shall find that it meets the following:

(a) Has the status of a tax exempt organization under section 501(c) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides homeownership education or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government assistance programs.

(2) For residential mortgage loans to have terms that are favorable to the borrower, the director shall determine that terms are consistent with loan

origination in a public or charitable context rather than in a commercial context.

(3) If the director determines that the application for a certificate of exemption should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. A decision of the director denying an application for a certificate of exemption pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department.

(4) The department has the authority to examine the books and activities of an organization it determines is a bona fide nonprofit organization. The director may, following a hearing under the Administrative Procedure Act, revoke the certificate of exemption granted to a bona fide nonprofit organization if he or she determines that such nonprofit organization fails to meet the requirements of subsection (1) of this section.

(5) In making its determinations and examinations under subsections (1), (2), and (4) of this section, the department may rely on its receipt and review of:

(a) Reports filed with federal, state, or local housing agencies and authorities;
or

(b) Reports and attestations required by the department.

Source: Laws 2012, LB965, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

45-706 License; issuance; denial; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.

(1) Upon the filing of an application for a license as a mortgage banker, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Residential Mortgage Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application; (b) delivery of the bond required under section 45-724; and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage banker license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage banker license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of

subsection (1) of this section or (b) an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law.

(3)(a) All initial licenses shall remain in full force and effect until the next succeeding December 31. Mortgage banker licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) For the annual renewal of a license to conduct a mortgage banking business under the Residential Mortgage Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (2) of section 45-748.

(4)(a) The department may place a mortgage banker licensee that is a sole proprietorship on inactive status for a period of up to twelve months upon receipt of a request from the licensee for inactive status. The request shall include notice that the licensee has temporarily suspended business, is not acting as a mortgage banker in this state, and has no pending customer complaints. The department shall notify the licensee within ten business days as to whether the request has been granted and, if granted, of the date of expiration of the inactive status.

(b) If a mortgage banker license becomes inactive under this section, the license shall remain inactive until the license expires, is cancelled, is surrendered, is suspended, is revoked, or is reactivated pursuant to subdivision (d) of this subsection.

(c) An inactive mortgage banker licensee may renew such inactive license if the licensee remains otherwise eligible for renewal pursuant to subdivision (3)(a) of this section, except for being covered by a surety bond pursuant to section 45-724. Such renewal shall not reactivate the license.

(d) The department has the authority to reactivate an inactive mortgage banker license following the department's receipt of a request from the inactive licensee that the licensee intends to resume business as a mortgage banker in this state if the inactive mortgage banker licensee meets the conditions for licensing at the time reactivation is requested, including, but not limited to, coverage by a surety bond pursuant to section 45-724.

(e) The department shall issue a notice of cancellation of an inactive mortgage banker license following the expiration of the period of inactive status set by the department pursuant to subdivision (a) of this subsection if the inactive mortgage banker licensee fails to request reactivation of the license prior to the date of expiration.

(5) The director may require a mortgage banker licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the

licensee warrants such a requirement or that the requirement is in the public interest.

Source: Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43; Laws 2008, LB380, § 2; Laws 2009, LB328, § 8; Laws 2012, LB965, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

45-727 Mortgage loan originator; license required; loan processor or underwriter; license required.

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(3) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

Source: Laws 2009, LB328, § 12; Laws 2013, LB290, § 2.

45-729 Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.

(1) The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) The applicant has not been convicted of, or pleaded guilty or nolo contendere or its equivalent to, in a domestic, foreign, or military court:

(i) A misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the business of a mortgage banker, depository institution, or installment loan company unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection;

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

(i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;

(ii) The applicant's current outstanding tax liens or other government liens and filings;

(iii) The applicant's foreclosures within the past three years; and

(iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

(d) The applicant has completed the prelicensing education requirements described in section 45-730;

(e) The applicant has passed a written test that meets the test requirement described in section 45-731; and

(f) The applicant is covered by a surety bond as required pursuant to section 45-724 or a supplemental surety bond as required pursuant to section 45-1007.

(2)(a) If the director determines that a mortgage loan originator license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial.

(b) The director shall not deny an application for a mortgage loan originator license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information.

(c) If an applicant for a mortgage loan originator license does not complete his or her license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice after initial filing of the application, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(d) A decision of the director denying a mortgage loan originator license application pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department.

(3) A mortgage loan originator license shall not be assignable.

Source: Laws 2009, LB328, § 14; Laws 2012, LB965, § 15; Laws 2013, LB290, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

45-731 Written test requirement; subject areas.

(1) In order to meet the written test requirement referred to in subdivision (1)(e) of section 45-729, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal laws and regulations pertaining to mortgage origination;

(c) State laws and regulations pertaining to mortgage origination; and

(d) Federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(b) An individual may take a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Source: Laws 2009, LB328, § 16; Laws 2012, LB965, § 16.

45-734 Mortgage loan originator license; inactive status; duration; renewal; reactivation.

(1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 45-732;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 45-742, or the license is reactivated.

(4) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 45-732 except for being covered by a surety bond pursuant to subdivision (1)(f) of section 45-729. Such renewal shall not reactivate the license.

(5) The department has the authority to reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 45-735 that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator meets the conditions for licensing at the time the reactivation notice is received, including, but not limited to, coverage by a surety bond pursuant to subdivision (1)(f) of section 45-729.

Source: Laws 2009, LB328, § 19; Laws 2012, LB965, § 17.

45-736 Unique identifier; use.

The unique identifier of any licensee originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.

Source: Laws 2009, LB328, § 21; Laws 2012, LB965, § 18.

45-737 Mortgage banker; licensee; duties.

A licensee licensed as a mortgage banker shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the

licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a

material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

- (a) Business reorganization;
- (b) A change of name, trade name, doing business as designation, or main office address;
- (c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office;
- (d) The relocation or closing of a branch office; or
- (e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14; Laws 2013, LB290, § 4.

45-737.01 Mortgage loan originator; licensee; duties.

(1) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

- (a) The filing of a voluntary petition in bankruptcy by such licensee or notice of a filing of an involuntary petition in bankruptcy against such licensee;
- (b) The filing of a criminal indictment or information against such licensee regarding (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;
- (c) Such licensee was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;
- (d) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against such licensee;
- (e) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against such licensee; or
- (f) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates such licensee's status as an approved loan originator.

(2) A licensee licensed as a mortgage loan originator shall update through the Nationwide Mortgage Licensing System and Registry his or her employment history on file with the department no later than ten business days after the

submission of the required notice of the creation or termination of an employment relationship pursuant to section 45-735.

(3) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subsections (1) and (2) of this section, including, but not limited to, any of the following:

- (a) A change in such licensee's name;
- (b) A change in such licensee's residential address;
- (c) A change in such licensee's employment address;
- (d) The filing of a tax or other governmental lien against such licensee;
- (e) The entry of a monetary judgment against such licensee; or
- (f) The entry of an order against such licensee, including orders to which such licensee consented, by any other state or federal regulator.

Source: Laws 2013, LB290, § 5.

45-741 Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.

(1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, registrant, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding, including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

- (a) Criminal, civil, and administrative history information;
- (b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in 15 U.S.C. 1681a(p), as such section existed on January 1, 2010; and
- (c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such licensee, registrant, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, registrant, individu-

al, or person subject to the act, concerning the business of the licensee, registrant, individual, or person subject to the act.

(4) Each licensee, registrant, individual, or person subject to the act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions on a form prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(5) The director may send a notice of investigation or inquiry request for information to a licensee or registrant. Upon receipt by a licensee or registrant of the director's notice of investigation or inquiry request for information, the licensee or registrant shall respond within twenty-one calendar days. Each day beyond that time a licensee or registrant fails to respond as required by this subsection shall constitute a separate violation of the act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee, a registrant, or any person.

(6) For the purpose of any investigation, examination, or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(7) In conducting an examination or investigation under this section, the director may rely on reports made by the licensee or registrant which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

(a) The United States Department of Housing and Urban Development;

(b) The Federal Housing Administration;

(c) The Federal National Mortgage Association;

(d) The Government National Mortgage Association;

(e) The Federal Home Loan Mortgage Corporation;

(f) The United States Department of Veterans Affairs; or

(g) The Consumer Financial Protection Bureau.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, registrant, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, registrant, individual, or person subject to the act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

(9) If the director receives a complaint or other information concerning noncompliance with the act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, registrant, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(11) The total charge for an examination or investigation shall be paid by the licensee or registrant as set forth in sections 8-605 and 8-606.

(12) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

Source: Laws 1989, LB 272, § 13; Laws 1993, LB 217, § 3; Laws 1995, LB 163, § 5; Laws 2003, LB 218, § 7; Laws 2007, LB124, § 45; R.S.Supp.,2008, § 45-710; Laws 2009, LB328, § 26; Laws 2010, LB892, § 15; Laws 2013, LB290, § 6.

45-742 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-737 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated, (ii) has a mortgage loan originator license which has been suspended by the director, or (iii) while previously associated in any other capacity with another licensee, was the subject of a complaint under the act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

(j) The licensee has violated the written restrictions or conditions under which the license was issued;

(k) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(l) The licensee has had a similar license revoked in any other jurisdiction; or

(m) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section and section 45-742.01, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the surrender. The director's approval of such license surrender shall not be required unless the director has commenced an examination or investigation pursuant to section 45-741 or has commenced a proceeding to revoke or suspend the licensee's license or impose an administrative fine pursuant to this section.

(4)(a) If a licensee fails to (i) renew its license as required by sections 45-706 and 45-732 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1989, LB 272, § 10; Laws 1997, LB 137, § 23; Laws 1999, LB 396, § 33; Laws 2003, LB 218, § 5; Laws 2005, LB 533, § 54; Laws 2006, LB 876, § 30; R.S.Supp., 2008, § 45-707; Laws 2009, LB328, § 27; Laws 2010, LB892, § 16; Laws 2011, LB75, § 4; Laws 2012, LB965, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

45-742.01 Mortgage banker or mortgage loan originator license; emergency orders authorized; grounds; notice; emergency hearing; judicial review; director; additional proceedings.

(1) The director may enter an emergency order suspending, limiting, or restricting the license of any mortgage banker or mortgage loan originator without notice or hearing if it appears upon grounds satisfactory to the director that:

(a) The licensee has failed to file the report of condition as required by section 45-726;

(b) The licensee has failed to increase its surety bond to the amount required by subsection (2) of section 45-724;

(c) The licensee has failed to provide any report required by the director as a condition of issuing such person a mortgage banker or mortgage loan originator license;

(d) The licensee is in such financial condition that it cannot continue in business safely with its customers;

(e) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust;

(f) The licensee has had its license suspended or revoked in any state based upon any act involving fraud, deception, theft, or breach of trust; or

(g) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741.

(2) An emergency order issued under this section becomes effective when signed by the director. Upon entry of an emergency order, the director shall promptly notify the affected person that such order has been entered, the reasons for such order, and the right to request an emergency hearing.

(3) A party aggrieved by an emergency order issued by the director under this section may request an emergency hearing. The request for hearing shall be filed with the director within ten business days after the date of the emergency order.

(4) Upon receipt of a written request for emergency hearing, the director shall conduct an emergency hearing within ten business days after the date of receipt of the request for hearing unless the parties agree to a later date or a hearing officer sets a later date for good cause shown.

(5) A person aggrieved by an emergency order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department.

(6) The director may obtain an order from the district court of Lancaster County for the enforcement of the emergency order.

(7) The director may vacate or modify an emergency order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(8) If an emergency hearing has not been requested pursuant to subsection (3) of this section and the emergency order remains in effect sixty days after issuance, the director shall initiate proceedings pursuant to section 45-742

unless the license was surrendered or expired during the sixty-day time period after issuance of the emergency order.

(9) An emergency order issued under this section shall remain in effect until it is vacated, modified, or superseded by an order of the director, superseded by a voluntary consent or compliance agreement between the director and the licensee, or until it is terminated by a court order.

Source: Laws 2012, LB965, § 20.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section

45-901. Act, how cited.

45-910. License; posting; renewal; fee.

45-920. Director; examination of licensee; powers; costs.

45-927. Fees, charges, costs, and fines; distribution.

45-930. Financial Literacy Cash Fund; created; use; investment.

45-901 Act, how cited.

Sections 45-901 to 45-930 shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Source: Laws 1994, LB 967, § 1; Laws 2006, LB 876, § 36; Laws 2012, LB269, § 1.

45-910 License; posting; renewal; fee.

(1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business.

(2) All licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of five hundred dollars for the main office location and five hundred dollars for each branch office location and (b) an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

Source: Laws 1994, LB 967, § 10; Laws 2001, LB 53, § 105; Laws 2005, LB 533, § 56; Laws 2012, LB269, § 2.

45-920 Director; examination of licensee; powers; costs.

(1) The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) The director may accept any examination, report, or information regarding a licensee from the Consumer Financial Protection Bureau or a foreign state agency. The director may provide any examination, report, or information

regarding a licensee to the Consumer Financial Protection Bureau or a foreign state agency. As used in this section, unless the context otherwise requires, foreign state agency means any duly constituted regulatory or supervisory agency which has authority over delayed deposit services businesses, payday lenders, or similar entities, and which is created under the laws of any other state or any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, or which is operating under the code of law for the District of Columbia.

Source: Laws 1994, LB 967, § 20; Laws 2007, LB124, § 52; Laws 2013, LB279, § 3.

45-927 Fees, charges, costs, and fines; distribution.

(1) The director shall collect fees, charges, costs, and fines under the Delayed Deposit Services Licensing Act and remit them to the State Treasurer. Except as provided in subsection (2) of this section, the State Treasurer shall credit the fees, charges, and costs to the Financial Institution Assessment Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) For fees collected pursuant to section 45-910, the State Treasurer shall (a) credit one hundred fifty dollars of each renewal fee for a main office to the Financial Institution Assessment Cash Fund and three hundred fifty dollars of each renewal fee for a main office to the Financial Literacy Cash Fund and (b) credit one hundred dollars of each renewal fee for a branch office to the Financial Institution Assessment Cash Fund and four hundred dollars of each renewal fee for a branch office to the Financial Literacy Cash Fund.

Source: Laws 1994, LB 967, § 27; Laws 1995, LB 599, § 15; Laws 2007, LB124, § 53; Laws 2012, LB269, § 3.

45-930 Financial Literacy Cash Fund; created; use; investment.

The Financial Literacy Cash Fund is created. Amounts credited to the fund shall include that portion of each renewal fee as provided in section 45-927 and such other revenue as is incidental to administration of the fund. The fund shall be administered by the University of Nebraska and shall be used to provide assistance to nonprofit entities that offer financial literacy programs to students in grades kindergarten through twelve. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2012, LB269, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section

45-1002. Terms, defined; act; applicability.

45-1008. License; issuance; requirements; term.

45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

Section

45-1018. Licensees; reports.

45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

45-1002 Terms, defined; act; applicability.

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(c) Department means the Department of Banking and Finance;

(d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(f) Director means the Director of Banking and Finance;

(g) Financial institution has the same meaning as in section 8-101;

(h) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(i) Licensee means any person who obtains a license under the Nebraska Installment Loan Act;

(j)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or

entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(k) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(l) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(m) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the Nebraska Installment Loan Act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Source: Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48; Laws 2009, LB328, § 41; Laws 2010, LB571, § 10; Laws 2010, LB892, § 19; Laws 2011, LB77, § 3; Laws 2012, LB965, § 21.

Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-1008 License; issuance; requirements; term.

Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the applica-

tion, in accordance with the act. The license shall remain in full force and effect until the following December 31 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act.

Source: Laws 1941, c. 90, § 12, p. 349; C.S.Supp.,1941, § 45-140; R.S. 1943, § 45-120; Laws 1993, LB 121, § 265; Laws 1997, LB 555, § 8; R.S.1943, (1998), § 45-120; Laws 2001, LB 53, § 36; Laws 2009, LB328, § 43; Laws 2013, LB279, § 4.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

(1) For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The expense of any publication required by this section shall be paid by the applicant licensee.

Source: Laws 1941, c. 90, § 6, p. 347; C.S.Supp.,1941, § 45-134; R.S. 1943, § 45-126; Laws 1973, LB 39, § 2; Laws 1995, LB 599, § 9; Laws 1997, LB 555, § 10; R.S.1943, (1998), § 45-126; Laws 2001, LB 53, § 41; Laws 2005, LB 533, § 60; Laws 2007, LB124, § 54; Laws 2009, LB328, § 44; Laws 2013, LB279, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

45-1018 Licensees; reports.

(1) A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) A licensee shall submit a mortgage report of condition as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-131; R.S.1943, (1998), § 45-131; Laws 2001, LB 53,

§ 46; Laws 2003, LB 217, § 40; Laws 2004, LB 999, § 39; Laws 2009, LB328, § 45; Laws 2010, LB892, § 21; Laws 2013, LB279, § 6.

45-1024 Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or

subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt

suspension contract is a contract of a financial institution or licensee and such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage; amounts charged for a guaranteed asset protection waiver; and fees and expenses charged for electronic title and lien services. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except

that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Source: Laws 1941, c. 90, § 15, p. 350; C.S.Supp.,1941, § 45-143; Laws 1943, c. 107, § 3, p. 370; R.S.1943, § 45-137; Laws 1957, c. 193, § 1, p. 684; Laws 1963, c. 273, § 2, p. 821; Laws 1963, Spec. Sess., c. 7, § 9, p. 93; Laws 1963, Spec. Sess., c. 9, § 1, p. 103; Laws 1979, LB 87, § 3; Laws 1980, LB 276, § 8; Laws 1982, LB 702, § 1; Laws 1984, LB 681, § 1; Laws 1994, LB 979, § 8; Laws 1995, LB 614, § 1; Laws 1997, LB 555, § 17; Laws 1999, LB 170, § 1; Laws 2000, LB 932, § 30; R.S.Supp.,2000, § 45-137; Laws 2001, LB 53, § 52; Laws 2003, LB 218, § 14; Laws 2004, LB 999, § 40; Laws 2005, LB 533, § 61; Laws 2006, LB 876, § 50; Laws 2009, LB328, § 47; Laws 2010, LB571, § 11; Laws 2011, LB77, § 4.

ARTICLE 12

NEBRASKA CONSTRUCTION PROMPT PAY ACT

Section

- 45-1201. Act, how cited.
 45-1202. Terms, defined.
 45-1203. Contractor; payment; payment request; subcontractor; payment; retainage; payment.
 45-1204. Withholdings; authorized.
 45-1205. Delay in payment; additional interest payment.
 45-1211. Violation of act; action for recovery; attorney's fees and costs.

45-1201 Act, how cited.

Sections 45-1201 to 45-1211 shall be known and may be cited as the Nebraska Construction Prompt Pay Act.

Source: Laws 2010, LB552, § 1; Laws 2014, LB961, § 4.
 Operative date July 18, 2014.

45-1202 Terms, defined.

For purposes of the Nebraska Construction Prompt Pay Act:

(1) Contractor includes individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person. Contractor does not include an individual or an entity performing work on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision;

(2) Owner means a person (a) who has an interest in any real property improved, (b) for whom an improvement is made, or (c) who contracted for an improvement to be made. Owner includes a person, an entity, or any political subdivision of this state. Owner does not include the State of Nebraska;

(3) Owner's representative means an architect, an engineer, or a construction manager in charge of a project for the owner or such other contract representative or officer as designated in the contract document as the party representing the owner's interest regarding administration and oversight of the project;

(4) Real property means real estate that is improved, including private and public land, and leaseholds, tenements, and improvements placed on the real property;

(5) Receipt means actual receipt of cash or funds by the contractor or subcontractor;

(6) Subcontractor means a person or an entity that has contracted to furnish labor or materials to, or performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property. Subcontractor includes materialmen and suppliers. Subcontractor does not include an individual or an entity performing work as a subcontractor on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision; and

(7) Substantially complete means the stage of a construction project when the project, or a designated portion thereof, is sufficiently complete in accordance with the contract so that the owner can occupy or utilize the project for its intended use.

Source: Laws 2010, LB552, § 2; Laws 2014, LB961, § 5.
Operative date July 18, 2014.

45-1203 Contractor; payment; payment request; subcontractor; payment; retainage; payment.

(1) When a contractor has performed work in accordance with the provisions of a contract with an owner, the owner shall pay the contractor within thirty days after receipt by the owner or the owner's representative of a payment request made pursuant to the contract.

(2) When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay the subcontractor and the subcontractor shall pay his, her, or its subcontractor, within ten days after receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for the subcontractor's work and materials based on work completed or service provided under the subcontract for which the subcontractor has properly requested payment, if the subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work.

(3) The owner or the owner's representative shall release and pay all retainage for work completed in accordance with the provisions of the contract within forty-five days after the project, or a designated portion thereof, is substantially complete. When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to

payment contained in the subcontract have been satisfied, the contractor shall pay all retainage due such subcontractor within ten days after receipt of the retainage.

Source: Laws 2010, LB552, § 3; Laws 2014, LB961, § 6.

Operative date July 18, 2014.

45-1204 Withholdings; authorized.

When work has been performed pursuant to a contract, an owner, a contractor, or a subcontractor may only withhold payment:

(1) For retainage, in an amount not to exceed the amount specified in the applicable contract, which shall not exceed a rate of ten percent. If the scope of work for the contractor or subcontractor from which retainage is withheld is fifty percent complete and if the contractor or subcontractor has performed work in accordance with the provisions in the applicable contract, no more than five percent of any additional progress payment may be withheld as retainage if the contractor or subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work;

(2) Of a reasonable amount, to the extent that such withholding is allowed in the contract, for any of the following reasons:

(a) Reasonable evidence showing that the contractual completion date will not be met due to unsatisfactory job progress;

(b) Third-party claims filed or reasonable evidence that such a claim will be filed with respect to work under the contract; or

(c) Failure of the contractor to make timely payments for labor, equipment, subcontractors, or materials; or

(3) After substantial completion, in an amount not to exceed one hundred twenty-five percent of the estimated cost to complete the work remaining on the contract.

Source: Laws 2010, LB552, § 4; Laws 2014, LB961, § 7.

Operative date July 18, 2014.

45-1205 Delay in payment; additional interest payment.

Except as provided in section 45-1204, if a periodic or final payment to (1) a contractor is delayed by more than thirty days after receipt of a properly submitted periodic or final payment request by the owner or owner's representative or (2) a subcontractor is delayed by more than ten days after receipt of a periodic or final payment by the contractor or subcontractor, then the remitting owner, contractor, or subcontractor shall pay the contractor or subcontractor interest due until such amount is paid, beginning on the day following the payment due date at the rate of one percent per month or a pro rata fraction thereof on the unpaid balance. Interest is due under this section only after the person charged the interest has been notified of the provisions of this section by the contractor or subcontractor. Acceptance of progress payments or a final payment shall release all claims for interest on such payments.

Source: Laws 2010, LB552, § 5; Laws 2014, LB961, § 9.

Operative date July 18, 2014.

45-1211 Violation of act; action for recovery; attorney's fees and costs.

Any individual, partnership, firm, limited liability company, corporation, or company may bring an action to recover any damages caused to such person or entity by a violation of the Nebraska Construction Prompt Pay Act. In addition to an award of damages, the court may award a plaintiff reasonable attorney's fees and costs as the court determines is appropriate.

Source: Laws 2014, LB961, § 8.
Operative date July 18, 2014.

CHAPTER 46

IRRIGATION AND REGULATION OF WATER

Article.

2. General Provisions.
 - (f) Application for Water. 46-236 to 46-241.
 - (l) Intrabasin Transfers. 46-294.
 - (m) Underground Water Storage. 46-297.
 - (p) Water Policy Task Force. 46-2,131 to 46-2,138. Repealed.
 - (q) Storm Water Management Plan Program. 46-2,139.
 - (r) Republican River Basin Water Sustainability Task Force. 46-2,140, 46-2,141.
6. Ground Water.
 - (b) Ground Water Conservation Districts. 46-633, 46-634.01.
 - (c) Pumping for Irrigation Purposes. 46-637.
 - (g) Industrial Ground Water Regulatory Act. 46-683.01.
 - (i) Republican River Basin. 46-692. Repealed.
7. Nebraska Ground Water Management and Protection Act. 46-701 to 46-756.
11. Chemigation. 46-1101 to 46-1125.
12. Water Well Standards and Contractors' Licensing. 46-1224.
13. Water Quality Monitoring. 46-1304, 46-1305.
16. Safety of Dams and Reservoirs Act. 46-1654.

ARTICLE 2

GENERAL PROVISIONS

(f) APPLICATION FOR WATER

Section

- 46-236. Application for water power; lease from state required; fee; renewal; cancellation; grounds.
- 46-240.01. Supplemental additional appropriations; agricultural appropriators; application.
- 46-241. Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(l) INTRABASIN TRANSFERS

- 46-294. Applications; approval; requirements; conditions; burden of proof.

(m) UNDERGROUND WATER STORAGE

- 46-297. Permit to appropriate water; modification to include underground water storage; procedure.

(p) WATER POLICY TASK FORCE

- 46-2,131. Repealed. Laws 2011, LB 2, § 8.
- 46-2,132. Repealed. Laws 2011, LB 2, § 8.
- 46-2,133. Repealed. Laws 2011, LB 2, § 8.
- 46-2,134. Repealed. Laws 2011, LB 2, § 8.
- 46-2,135. Repealed. Laws 2011, LB 2, § 8.
- 46-2,136. Repealed. Laws 2011, LB 2, § 8.
- 46-2,137. Repealed. Laws 2011, LB 2, § 8.
- 46-2,138. Repealed. Laws 2011, LB 2, § 8.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

- 46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

Section

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140. Republican River Basin Water Sustainability Task Force; created; members; meetings; duties; report.

46-2,141. Republican River Basin Water Sustainability Task Force Cash Fund; created; use; investment.

(f) APPLICATION FOR WATER

46-236 Application for water power; lease from state required; fee; renewal; cancellation; grounds.

An application for appropriation of water for water power shall meet the requirements of section 46-234 and subsection (1) of section 46-235 to be approved. Within six months after the approval of an application for water power and before placing water to any beneficial use, the applicant shall enter into a contract with the State of Nebraska, through the department, for leasing the use of all water so appropriated. Such lease shall be upon forms prepared by the department, and the time of such lease shall not run for a greater period than fifty years; and for the use of water for power purposes the applicant shall pay into the state treasury on or before January 1 each year fifteen dollars for each one hundred horsepower for all water so appropriated. Upon application of the lessee or its assigns, the department shall renew the lease so as to continue it and the water appropriation in full force and effect for an additional period of fifty years.

Upon the failure of the applicant to comply with any of the provisions of such lease and the failure to pay any of such fees, the department shall notify the lessee that the required fees have not been paid to the department or that the lessee is not otherwise in compliance with the provisions of the lease. If the lessee has not come into compliance with all provisions of the lease or has not paid to the department all required fees within fifteen calendar days after the date of such notice, the department shall issue an order denying the applicant the right to divert or otherwise use the water appropriation for power production. The department shall rescind the order denying use of the water appropriation at such time as the lessee has come into compliance with all provisions of the lease and has paid all required fees to the department. If after forty-five calendar days from the date of issuance of the order the lessee is not in compliance with all provisions of the lease or required fees have not been paid to the department, such lease and water appropriation shall be canceled by the department.

Source: Laws 1921, c. 291, § 1, p. 942; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S.1943, § 46-236; Laws 1972, LB 1306, § 1; Laws 1987, LB 140, § 7; Laws 2000, LB 900, § 111; Laws 2011, LB27, § 1.

46-240.01 Supplemental additional appropriations; agricultural appropriators; application.

All appropriators of water for agricultural purposes of less than the statutory limit of direct flow from the public waters of this state within the drainage basin of the stream from which such waters originate shall be entitled to such additional appropriation or appropriations from the direct flow of such stream, within the statutory limits provided by law, as may be necessary and required

for the production of crops in the practice of good husbandry. Applications for such supplemental additional appropriations from the direct flow, upon the approval or granting thereof, shall have priority within the drainage basin as of the date such applications are filed in the office of the department.

Source: Laws 1953, c. 160, § 1, p. 503; Laws 2000, LB 900, § 114; Laws 2011, LB31, § 1.

46-241 Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with the Safety of Dams and Reservoirs Act. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by the act, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock. This subsection does not exempt any person from the requirements of the Safety of Dams and Reservoirs Act or section 54-2425.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of the Safety of Dams and Reservoirs Act or section 46-233 or 54-2425.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required downstream in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reser-

voir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-241; Laws 1951, c. 101, § 91, p. 487; Laws 1955, c. 183, § 2, p. 515; Laws 1971, LB 823, § 1; Laws 1973, LB 186, § 8; Laws 1983, LB 198, § 9; Laws 1985, LB 103, § 2; Laws 1985, LB 488, § 5; Laws 1995, LB 309, § 1; Laws 2000, LB 900, § 115; Laws 2003, LB 619, § 4; Laws 2004, LB 916, § 2; Laws 2004, LB 962, § 14; Laws 2005, LB 335, § 74; Laws 2014, LB1098, § 12.
Operative date April 17, 2014 .

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

(I) INTRABASIN TRANSFERS

46-294 Applications; approval; requirements; conditions; burden of proof.

(1) Except for applications approved in accordance with subsection (1) of section 46-291, the Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements:

(a) The application is complete and all other information requested pursuant to section 46-293 has been provided;

(b) The proposed use of water after the transfer or change will be a beneficial use of water;

(c)(i) Any requested transfer in the location of use is within the same river basin as defined in section 46-288 or (ii) the river basin from which the appropriation is to be transferred is tributary to the river basin to which the appropriation is to be transferred;

(d) Except as otherwise provided in subsection (4) of this section, the proposed transfer or change, alone or when combined with any new or increased use of any other source of water at the original location or within the

same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company for the original or other purposes, will not diminish the supply of water available for or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing pursuant to section 46-291;

(e) The quantity of water that is transferred for diversion or other use at the new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred, except that this subdivision does not apply to (i) a transfer in the location of use if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change or (ii) a transfer or change in the purpose of use of a surface water irrigation appropriation as provided for in subsection (3), (5), or (6) of section 46-290 if the transfer or change in purpose will not diminish the supply of water available or otherwise adversely affect any other water appropriator, adversely affect Nebraska's ability to meet its obligations under a multistate agreement, or result in administration of the prior appropriation system by the Department of Natural Resources, which would not have otherwise occurred;

(f) The appropriation, prior to the transfer or change, is not subject to termination or cancellation pursuant to sections 46-229 to 46-229.04;

(g) If a proposed transfer or change is of an appropriation that has been used for irrigation and is in the name of an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company or is dependent upon any such district's or company's facilities for water delivery, such district or company has approved the transfer or change;

(h) If the proposed transfer or change is of a storage-use appropriation and if the owner of that appropriation is different from the owner of the associated storage appropriation, the owner of the storage appropriation has approved the transfer or change;

(i) If the proposed transfer or change is to be permanent, either (i) the purpose for which the water is to be used before the transfer or change is in the same preference category established by section 46-204 as the purpose for which the water is to be used after the transfer or change or (ii) the purpose for which the water is to be used before the transfer or change and the purpose for which the water is to be used after the transfer or change are both purposes for which no preferences are established by section 46-204;

(j) If the proposed transfer or change is to be temporary, it will be for a duration of no less than one year and, except as provided in section 46-294.02, no more than thirty years;

(k) The transfer or change will not be inconsistent with any applicable state or federal law and will not jeopardize the state's compliance with any applicable interstate water compact or decree or cause difficulty in fulfilling the provisions of any other formal state contract or agreement; and

(l) The proposed transfer or change is in the public interest. The director's considerations relative to the public interest shall include, but not be limited to, (i) the economic, social, and environmental impacts of the proposed transfer or change and (ii) whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change. The Department of Natural Resources shall adopt and

promulgate rules and regulations to govern the director's determination of whether a proposed transfer or change is in the public interest.

(2) The applicant has the burden of proving that the proposed transfer or change will comply with subdivisions (1)(a) through (l) of this section, except that (a) the burden is on a riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order to prevent approval of an application and (b) if both the current use and the proposed use after a transfer are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change, there is a rebuttable presumption that the transfer will be consistent with subdivision (1)(d) of this section.

(3) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest, to ensure consistency with any of the other criteria in subsection (1) of this section, or to provide the department with information needed to properly and efficiently administer the appropriation while the transfer or change remains in effect. If necessary to prevent diminution of supply for any other appropriator, the conditions imposed by the director shall require that historic return flows be maintained or replaced in quantity, timing, and location. After approval of any such transfer or change, the appropriation shall be subject to all water use restrictions and requirements in effect at any new location of use and, if applicable, at any new diversion location. An appropriation for which a transfer or change has been approved shall retain the same priority date as that of the original appropriation. If an approved transfer or change is temporary, the location of use, purpose of use, or type of appropriation shall revert to the location of use, purpose of use, or type of appropriation prior to the transfer or change.

(4) In approving an application for a transfer, the director may also authorize the overlying of water appropriations on the same lands, except that if any such overlying of appropriations would result in either the authorized diversion rate or the authorized aggregate annual quantity that could be diverted to be greater than is otherwise permitted by section 46-231, the director shall limit the total diversion rate or aggregate annual quantity for the appropriations overlain to the rate or quantity that he or she determines is necessary, in the exercise of good husbandry, for the production of crops on the land involved. The director may also authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location. An increase in the number of acres to be irrigated shall be approved only if (a) such an increase will not diminish the supply of water available to or otherwise adversely affect another water appropriator or (b) the transfer would not adversely affect the water supply for any river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined to be fully appropriated pursuant to section 46-714 and (i) the number of acres authorized under the appropriation when originally approved has not been increased previously, (ii) the increase in the number of acres irrigated will not exceed five percent of the number of acres being irrigated under the permit before the proposed transfer or a total of ten acres, whichever acreage is less, and (iii) all the use will be either on the quarter section to which the appropriation was appurtenant before the transfer or on an adjacent quarter section.

Source: Laws 1983, LB 21, § 6; Laws 1984, LB 818, § 2; Laws 1993, LB 789, § 4; Laws 2000, LB 900, § 135; Laws 2004, LB 962, § 20; Laws 2012, LB526, § 1.

(m) UNDERGROUND WATER STORAGE

46-297 Permit to appropriate water; modification to include underground water storage; procedure.

Any person who has an approved, unperfected appropriation pursuant to Chapter 46, article 2, may apply to the department for a modification of such permit to include intentional underground water storage associated with the appropriation. The application shall be made on a form prescribed and furnished by the department without cost to the applicant. Upon receipt of such an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department, subject to section 46-226.02.

Source: Laws 1983, LB 198, § 11; Laws 1997, LB 752, § 120; Laws 2013, LB102, § 1.

(p) WATER POLICY TASK FORCE

46-2,131 Repealed. Laws 2011, LB 2, § 8.

46-2,132 Repealed. Laws 2011, LB 2, § 8.

46-2,133 Repealed. Laws 2011, LB 2, § 8.

46-2,134 Repealed. Laws 2011, LB 2, § 8.

46-2,135 Repealed. Laws 2011, LB 2, § 8.

46-2,136 Repealed. Laws 2011, LB 2, § 8.

46-2,137 Repealed. Laws 2011, LB 2, § 8.

46-2,138 Repealed. Laws 2011, LB 2, § 8.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environmental Quality, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 77 Federal Register 18652-18669, that apply for grants and meet the

requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 77 Federal Register 18652-18669, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1; Laws 2014, LB683, § 1.

Effective date July 18, 2014.

(r) **REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE**

46-2,140 Republican River Basin Water Sustainability Task Force; created; members; meetings; duties; report.

(1) The Republican River Basin Water Sustainability Task Force is created. The task force shall consist of twenty-two voting members, and except for the state agency representatives, the members shall be residents representing a cross-section of the Republican River basin. The Governor shall appoint two representatives from each natural resources district in the basin; four representatives from the irrigation districts in the basin; one representative each from the University of Nebraska Institute of Agriculture and Natural Resources, the Game and Parks Commission, the Department of Agriculture, and the Department of Natural Resources; one representative each from a school district, a city, a county, and a public power district in the basin; and two representatives from agriculture-related businesses in the Republican River basin. The chairperson of the Executive Board of the Legislative Council shall appoint five ex officio, nonvoting members from the Legislature, two of whom are residents of the basin, two of whom have a portion of his or her legislative district in the basin, and one who is the chairperson of the Natural Resources Committee of

the Legislature. For administrative and budgetary purposes only, the task force shall be housed within the Department of Natural Resources. Additional advisory support may be requested from appropriate federal and state agencies. Members of the task force who are not state employees shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties as members as provided in sections 81-1174 to 81-1177.

(2) The task force shall meet no less than quarterly and shall hire a trained facilitator to conduct its meetings. The purposes of the task force are to define water sustainability for the Republican River basin, develop and recommend a plan to help reach water sustainability in the basin, and develop and recommend a plan to help avoid a water-short year in the basin. The task force shall convene within thirty days after appointment of the members is completed to elect a chairperson and conduct such other business as deemed necessary.

(3) The task force shall present a preliminary report to the Governor and the Legislature on or before May 15, 2011, and a final report before May 15, 2012. This section terminates on June 30, 2012.

Source: Laws 2010, LB1057, § 1; Laws 2011, LB243, § 1.
Termination date June 30, 2012.

46-2,141 Republican River Basin Water Sustainability Task Force Cash Fund; created; use; investment.

The Republican River Basin Water Sustainability Task Force Cash Fund is created. The fund shall be administered by the Department of Natural Resources and expended at the direction of the Republican River Basin Water Sustainability Task Force. The fund shall consist of funds appropriated by the Legislature, money received as gifts, grants, and donations, and transfers authorized by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB1057, § 2; Laws 2011, LB2, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**ARTICLE 6
GROUND WATER**

(b) GROUND WATER CONSERVATION DISTRICTS

Section

46-633. Repealed. Laws 2011, LB 2, § 8.

46-634.01. Repealed. Laws 2011, LB 2, § 8.

(c) PUMPING FOR IRRIGATION PURPOSES

46-637. Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01. Permit; application to amend; procedures; limitation.

(i) REPUBLICAN RIVER BASIN

46-692. Repealed. Laws 2011, LB 1, § 1.

(b) GROUND WATER CONSERVATION DISTRICTS

46-633 Repealed. Laws 2011, LB 2, § 8.

46-634.01 Repealed. Laws 2011, LB 2, § 8.

(c) PUMPING FOR IRRIGATION PURPOSES

46-637 Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. In approving or disapproving applications for such permits, the Director of Natural Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream. This section does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

Source: Laws 1963, c. 275, § 2, p. 828; Laws 1993, LB 131, § 17; Laws 1997, LB 30, § 3; Laws 1997, LB 752, § 121; Laws 2000, LB 900, § 176; Laws 2001, LB 667, § 8; Laws 2013, LB102, § 2.

Cross References

Exemption for reusing ground water from reuse pit, see section 46-287.
For additional definitions, see section 46-706.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01 Permit; application to amend; procedures; limitation.

If during construction or operation a permit holder determines (1) that an additional amount of water is or will be required for the proposed use set forth in a permit issued pursuant to section 46-683 or (2) that there is a need to amend any condition set forth in the permit, the permit holder may file an application to amend the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five percent from the amounts approved in the original permit, except for an amendment to increase the maximum daily volumetric flow rate or annual volume to levels authorized under a permit issued by the Department of Environmental Quality pursuant to section 81-1504 and subsection (9) of section 81-1505.

Source: Laws 1986, LB 309, § 3; Laws 2012, LB498, § 1.

(i) REPUBLICAN RIVER BASIN

46-692 Repealed. Laws 2011, LB 1, § 1.**ARTICLE 7****NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT**

Section

- 46-701. Act, how cited.
- 46-707. Natural resources district; powers; enumerated; fee.
- 46-708. Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.
- 46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.
- 46-753. Water Resources Trust Fund; created; use; investment; matching funds required; when.
- 46-755. Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.
- 46-756. Ground water augmentation project; public hearing; notice.

46-701 Act, how cited.

Sections 46-701 to 46-756 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Source: Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7; Laws 2003, LB 619, § 9; R.S.Supp.,2003, § 46-656.01; Laws 2004, LB 962, § 41; Laws 2006, LB 1226, § 19; Laws 2009, LB477, § 3; Laws 2014, LB1098, § 13.

Operative date April 17, 2014.

46-707 Natural resources district; powers; enumerated; fee.

(1) Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(a) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(b) Require such reports from ground water users as may be necessary;

(c) Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

(d) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private

corporations, or any association or individual on any matter relevant to the administration of the act;

(g) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(h) Issue cease and desist orders, following three days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

(3) In addition to the powers enumerated in subsections (1) and (2) of this section, a district may assess a fee against a person requesting a variance to cover the administrative cost of consideration of the variance, including, but not limited to, costs of copying records and the cost of publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located.

Source: Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22; Laws 2009, LB477, § 5; Laws 2012, LB743, § 1; Laws 2014, LB513, § 1.
Effective date July 18, 2014.

46-708 Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.

(1) In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation.

(2) Each district shall adopt, following public hearing, notice of which shall be given in the manner provided in section 46-743, rules and regulations necessary to control or prohibit surface runoff of water derived from ground water irrigation. Such rules and regulations shall prescribe (a) standards and criteria delineating what constitutes the inefficient or improper runoff of ground water used in irrigation, (b) procedures to prevent, control, and abate such runoff, (c) measures for the construction, modification, extension, or operation of remedial measures to prevent, control, or abate runoff of ground water used in irrigation, and (d) procedures for the enforcement of this section.

(3) Each district may, upon three days' notice to the person affected, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, issue cease and desist orders to enforce any of the provisions of this section or rules and regulations issued pursuant to this section.

Source: Laws 1975, LB 577, § 9; Laws 1978, LB 217, § 1; R.S.1943, (1993), § 46-664; Laws 1996, LB 108, § 17; R.S.1943, (1998), § 46-656.11; Laws 2004, LB 962, § 48; Laws 2014, LB513, § 2. Effective date July 18, 2014.

46-715 River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

(1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be

fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, unless such regulation is necessary to carry out the goals and objectives of a basin-wide plan pursuant to section 46-755, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;

(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and

irrigation districts, reclamation districts, municipalities, other political subdivisions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

Nothing in this subsection shall require revision or amendment of an integrated management plan approved on or before August 30, 2009.

(4) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun, in the case of a river basin, subbasin, or reach designated as overappropriated or preliminarily determined to be fully appropriated in accordance with section 46-713, after the date of such designation or preliminary determination.

(5)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (4) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (4) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and

each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (5) as necessary based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (5) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(6) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (4)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

Source: Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23; Laws 2009, LB54, § 3; Laws 2010, LB764, § 1; Laws 2014, LB1098, § 14.

Operative date April 17, 2014.

46-753 Water Resources Trust Fund; created; use; investment; matching funds required; when.

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be administered by the department. The department shall adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or imple-

menting integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Source: Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4; Laws 2011, LB2, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

46-755 Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.

This section shall apply notwithstanding any other provision of the Nebraska Ground Water Management and Protection Act.

(1) If a river basin as described in subdivision (2)(a) of section 2-1504 includes three or more natural resources districts that, pursuant to subdivision (1)(a) of section 46-715, have been or are required to develop an integrated management plan for all or substantially all (eighty-five percent) of the district, such natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin, subbasin, or reach determined by the department to have hydrologically connected water supplies, except that any natural resources district that has developed and implemented a basin-wide plan pursuant to subsection (5) of section 46-715 shall not be affected by this section. If deemed appropriate by the department and the affected natural resources districts, the basin-wide plan may combine two or more river basins.

(2) An integrated management plan developed under subdivision (1)(a) or (b) of section 46-715 shall ensure such integrated management plan is consistent with any basin-wide plan developed pursuant to this section. However, an integrated management plan may implement additional incentive programs or controls pursuant to section 46-739 if the programs and controls are consistent with the basin-wide plan.

(3) A basin-wide plan shall be completed, adopted, and take effect within three years after April 17, 2014, unless the department and the natural resources districts jointly agree to an extension of not more than an additional two years.

(4) A basin-wide plan shall (a) have clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the

near term and the long term, (b) ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained, and (c) set forth a timeline to meet the goals and objectives as required under this subdivision, but in no case shall a timeline exceed thirty years after April 17, 2014.

(5)(a) A basin-wide plan developed under this section shall utilize the best generally-accepted methodologies and available information, data, and science to evaluate the effect of existing uses of hydrologically connected water on existing surface water and ground water users. The plan shall include a process to gather and evaluate data, information, and methodologies to increase understanding of the surface water and hydrologically connected ground water system within the basin, subbasin, or reach and test the validity of the conclusions, information, and assumptions upon which the plan is based.

(b) A basin-wide plan developed under this section shall include a schedule indicating the end date by which the stated goals and objectives are to be achieved and the management actions to be taken to achieve the goals and objectives. To ensure that reasonable progress is being made toward achieving the final goals and objectives of the plan, the schedule shall also include measurable hydrologic objectives and intermediate dates by which the objectives are expected to be met and monitoring plans to measure the extent to which the objectives are being achieved. Such intermediate objectives shall be established in a manner that, if achieved on schedule, will provide a reasonable expectation that the goals of the plan will be achieved by the established end date.

(c) A basin-wide plan shall be developed using a consultation and collaboration process involving representatives from irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, ground water users, range livestock owners, the Game and Parks Commission, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to become an official participant in such process. The department and affected natural resources districts shall involve official participants in formulating, evaluating, and recommending plans and management actions and work to reach an agreement among all official participants involved in a basin-wide plan. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and the affected natural resources districts shall adopt the agreed-upon basin-wide plan. If agreement cannot be reached by all parties involved, the basin-wide plan shall be developed and adopted by the department and the affected natural resources districts or by the Interrelated Water Review Board pursuant to section 46-719.

(d) Within five years after the adoption of the basin-wide plan, and every five years thereafter, the department and affected natural resources districts shall conduct a technical analysis of the actions taken in a river basin to determine the progress towards meeting the goals and objectives of the plan. The analysis shall include an examination of (i) available supplies, current uses, and changes in long-term water availability, (ii) the effects of conservation practices and natural causes, including, but not limited to, drought, and (iii) the effects of the plan in meeting the goal of sustaining a balance between water uses and water

supplies. The analysis shall determine if changes or modifications to the basin-wide plan are needed to meet the goals and objectives pursuant to subdivision (4)(a) of this section. The department and affected natural resources districts shall present the results of the analysis and any recommended modifications to the plan at a public meeting and shall provide for at least a thirty-day public comment period before holding a public hearing on the recommended modifications. The department shall submit a report to the Legislature of the results of this analysis and the progress made under the basin-wide plan. The report shall be submitted electronically. Any official participant or stakeholder may submit comments to the department and affected natural resources districts on the final basin-wide plan adopted by the department and affected natural resources districts, which shall be made a part of the report to the Legislature.

(e) Before adoption of a basin-wide plan, the department and affected natural resources districts shall schedule at least one public hearing to take testimony on the proposed plan. Any such hearings shall be held in reasonable proximity to the area affected by the plan. Notice of hearings shall be published as provided in section 46-743. All interested persons may appear at any hearings and present testimony or provide other evidence relevant to the issues under consideration. Within sixty days after the final hearing, the department and affected natural resources districts shall jointly determine whether to adopt the plan.

(f) The department and the affected natural resources districts may utilize, when necessary, the Interrelated Water Review Board process provided in section 46-719 for disputes arising from developing, implementing, and enforcing a basin-wide plan developed under this section.

Source: Laws 2014, LB1098, § 15.

Operative date April 17, 2014.

46-756 Ground water augmentation project; public hearing; notice.

On and after April 17, 2014, a board shall not vote to enter into a ground water augmentation project without conducting a public hearing on the project, with notice of the hearing given as provided in section 46-743.

Source: Laws 2014, LB1098, § 16.

Operative date April 17, 2014.

ARTICLE 11 CHEMIGATION

Section

- | | |
|-------------|---|
| 46-1101. | Act, how cited. |
| 46-1103. | Definitions, sections found. |
| 46-1116.01. | Working day, defined. |
| 46-1117. | Permit required; exception; application. |
| 46-1118. | Repealed. Laws 2011, LB 2, § 8. |
| 46-1119. | Emergency permit; application; fee; violation; penalty. |
| 46-1121. | Fees; Chemigation Costs Fund; created; investment; annual permits; renewal. |
| 46-1123. | Districts; annual reports; contents. |
| 46-1125. | Permit denial, suspension, revocation; grounds. |

46-1101 Act, how cited.

Sections 46-1101 to 46-1148 shall be known and may be cited as the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 1; Laws 1988, LB 1046, § 1; Laws 2014, LB272, § 1.

Effective date July 18, 2014.

46-1103 Definitions, sections found.

For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 46-1104 to 46-1116.01 shall apply.

Source: Laws 1986, LB 284, § 3; Laws 2014, LB272, § 2.

Effective date July 18, 2014.

46-1116.01 Working day, defined.

Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

Source: Laws 2014, LB272, § 3.

Effective date July 18, 2014.

46-1117 Permit required; exception; application.

No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. Any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department or by the district. Upon request, forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in section 46-1119, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each approved application or the information contained in the application shall be maintained by the district and provided to the department upon request. This section shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

Source: Laws 1986, LB 284, § 17; Laws 2011, LB2, § 4; Laws 2011, LB28, § 1.

46-1118 Repealed. Laws 2011, LB 2, § 8.

46-1119 Emergency permit; application; fee; violation; penalty.

(1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within two working days after

the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129. If the district has not denied an emergency permit within two working days, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee as established in 46-1121 not to exceed five hundred dollars payable to the district. For each permit, ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 46-1120.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

Source: Laws 1986, LB 284, § 19; Laws 2014, LB272, § 4.
Effective date July 18, 2014.

46-1121 Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.

(1) To aid in defraying the cost of administration of the Nebraska Chemigation Act, the district shall collect an initial application fee for a permit, a special permit fee, an annual renewal fee, and an emergency permit fee. The fees shall be established by the district and shall be sufficient to cover the ongoing administrative costs and the costs of annual inspection programs by the district and department. The fees collected pursuant to this section shall be established by the district in the amount necessary to pay reasonable costs of administering the permit program pursuant to the act. The fee for a permit and special permit shall not exceed one hundred fifty dollars. The fee for a renewal permit shall not exceed one hundred dollars. The fees for an emergency permit under section 46-1119 shall not exceed five hundred dollars. The district shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the district by a person or persons applying for a permit to operate a chemigation system.

(2) The fee for initial application for a permit or special permit shall be payable to the district. For each permit, five dollars shall be paid by the district to the department.

(3) The annual fee for renewal of a permit or special permit shall be payable to the district. For each permit, two dollars of the annual fee shall be paid by the district to the department.

(4) All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Chemigation Costs Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Source: Laws 1986, LB 284, § 21; Laws 1987, LB 146, § 5; Laws 1988, LB 1046, § 3; Laws 1995, LB 7, § 43; Laws 2009, First Spec. Sess., LB3, § 21; Laws 2014, LB272, § 5.
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

46-1123 Districts; annual reports; contents.

Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

Source: Laws 1986, LB 284, § 23; Laws 2011, LB28, § 2.

46-1125 Permit denial, suspension, revocation; grounds.

The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 on any of the following grounds:

(1) Practice of fraud or deceit in obtaining a permit; or

(2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 284, § 25; Laws 2011, LB2, § 5.

ARTICLE 12

WATER WELL STANDARDS AND CONTRACTORS' LICENSING

Section

46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the on-line services for

registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or less and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump more than fifty gallons per minute. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161; Laws 2011, LB27, § 2.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 13 WATER QUALITY MONITORING

Section

46-1304. Report required; Department of Environmental Quality; duties.

46-1305. Report required; natural resources district; duties.

46-1304 Report required; Department of Environmental Quality; duties.

The Department of Environmental Quality shall prepare a report outlining the extent of ground water quality monitoring conducted by natural resources districts during the preceding calendar year. The department shall analyze the data collected for the purpose of determining whether or not ground water quality is degrading or improving and shall present the results electronically to the Natural Resources Committee of the Legislature beginning December 1, 2001, and each year thereafter. The districts shall submit in a timely manner all ground water quality monitoring data collected to the department or its designee. The department shall use the data submitted by the districts in conjunction with all other readily available and compatible data for the purposes of the annual ground water quality trend analysis.

Source: Laws 2001, LB 329, § 11; Laws 2012, LB782, § 56.

46-1305 Report required; natural resources district; duties.

Each natural resources district shall submit electronically an annual report to the Natural Resources Committee of the Legislature detailing all water quality programs conducted by the district in the preceding calendar year. The report shall include the funds received and expended for water quality projects and a listing of any unfunded projects. The first report shall be submitted on or before December 1, 2001, and then each December 1 thereafter.

Source: Laws 2001, LB 329, § 12; Laws 2012, LB782, § 57.

ARTICLE 16 SAFETY OF DAMS AND RESERVOIRS ACT

Section

46-1654. Application approval; issuance; public hearing; notice to department; when.

46-1654 Application approval; issuance; public hearing; notice to department; when.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

Source: Laws 2005, LB 335, § 54; Laws 2009, LB209, § 2; Laws 2011, LB32, § 1.

CHAPTER 47

JAILS AND CORRECTIONAL FACILITIES

Article.

6. Community Corrections. 47-621 to 47-639.
7. Medical Services. 47-703.

ARTICLE 6

COMMUNITY CORRECTIONS

Section

- | | |
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| 47-621. | Terms, defined. |
| 47-622. | Community Corrections Division; created. |
| 47-623. | Repealed. Laws 2011, LB 390, § 39. |
| 47-624. | Division; duties. |
| 47-624.01. | Division; plan for implementation and funding of reporting centers; duties. |
| 47-625. | Repealed. Laws 2011, LB 390, § 39. |
| 47-627. | Uniform crime data analysis system. |
| 47-628. | Community correctional programming; condition of probation. |
| 47-629. | Community correctional programming; paroled offenders. |
| 47-630. | Repealed. Laws 2011, LB 390, § 39. |
| 47-631. | Repealed. Laws 2011, LB 390, § 39. |
| 47-632. | Community Corrections Uniform Data Analysis Cash Fund; created; use; investment. |
| 47-634. | Receipt of funds by local entity; local advisory committee required; plan required. |
| 47-635. | Repealed. Laws 2011, LB 390, § 39. |
| 47-636. | Repealed. Laws 2011, LB 390, § 39. |
| 47-637. | Repealed. Laws 2011, LB 390, § 39. |
| 47-638. | Repealed. Laws 2011, LB 390, § 39. |
| 47-639. | Repealed. Laws 2011, LB 390, § 39. |

47-621 Terms, defined.

For purposes of the Community Corrections Act:

(1) Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for adult offenders, (c) provides programs and services to aid adult offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;

(2) Director means the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(3) Division means the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Source: Laws 2003, LB 46, § 33; Laws 2005, LB 538, § 12; Laws 2011, LB390, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

47-622 Community Corrections Division; created.

The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Division is created within the Nebraska Commission on Law Enforcement and Criminal Justice. The director shall appoint and remove employees of the division and delegate appropriate powers and duties to such employees.

Source: Laws 2003, LB 46, § 34; Laws 2005, LB 538, § 13; Laws 2011, LB390, § 7.

47-623 Repealed. Laws 2011, LB 390, § 39.

47-624 Division; duties.

The division shall:

(1) Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services to develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(2) Develop, in consultation with the probation administrator and the Parole Administrator, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(3) Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services on the development of additional reporting centers as set forth in section 47-624.01;

(4) Analyze and promote the consistent use of offender risk assessment tools;

(5) Educate the courts, the Board of Parole, criminal justice system stakeholders, and the general public about the availability, use, and benefits of community correctional facilities and programs;

(6) Enter into and administer contracts, if necessary, to carry out the purposes of the Community Corrections Act;

(7) In order to ensure adequate funding for substance abuse treatment programs, consult with the probation administrator and the Parole Administrator and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252 and subdivision (8) of section 83-1,102;

(8) Study substance abuse and mental health treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(9) Research and evaluate existing community corrections facilities and programs, within the limits of available funding;

(10) Develop standardized definitions of outcome measures for community corrections facilities and programs, including, but not limited to, recidivism, employment, and substance abuse;

(11) Report annually to the Legislature and the Governor on the development and performance of community corrections facilities and programs. The report submitted to the Legislature shall be submitted electronically. The report shall include the following:

(a) A description of community corrections facilities and programs currently serving offenders in Nebraska, which includes the following information:

(i) The target population and geographic area served by each facility or program, eligibility requirements, and the total number of offenders utilizing the facility or program over the past year;

(ii) Services provided to offenders at the facility or in the program;

(iii) The costs of operating the facility or program and the cost per offender; and

(iv) The funding sources for the facility or program;

(b) The progress made in expanding community corrections facilities and programs statewide and an analysis of the need for additional community corrections services;

(c) An analysis of the impact community corrections facilities and programs have on the number of offenders incarcerated within the Department of Correctional Services; and

(d) The recidivism rates and outcome data for probationers, parolees, and problem-solving-court clients participating in community corrections programs;

(12) Grant funds to entities including local governmental agencies, nonprofit organizations, and behavioral health services which will support the intent of the act;

(13) Manage all offender data acquired by the division in a confidential manner and develop procedures to ensure that identifiable information is not released;

(14) Establish and administer grants, projects, and programs for the operation of the division; and

(15) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

Source: Laws 2003, LB 46, § 36; Laws 2005, LB 538, § 15; Laws 2006, LB 1113, § 47; Laws 2010, LB864, § 2; Laws 2011, LB390, § 8; Laws 2012, LB782, § 58; Laws 2012, LB817, § 3.

47-624.01 Division; plan for implementation and funding of reporting centers; duties.

(1) The division shall collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services in developing a plan for the implementation and funding of reporting centers in Nebraska.

(2) The plan shall include recommended locations for at least one reporting center in each district court judicial district that currently lacks such a center and shall prioritize the recommendations for additional reporting centers based upon need.

(3) The plan shall also identify and prioritize the need for expansion of reporting centers in those district court judicial districts which currently have a reporting center but have an unmet need for additional reporting center services due to capacity, distance, or demographic factors.

Source: Laws 2010, LB864, § 3; Laws 2011, LB390, § 9.

47-625 Repealed. Laws 2011, LB 390, § 39.

47-627 Uniform crime data analysis system.

The director shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, participants in specialized community corrections programs, admissions to and discharges from problem-solving courts, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The division and the Supreme Court shall have access to such data to implement the Community Corrections Act.

Source: Laws 2003, LB 46, § 39; Laws 2005, LB 538, § 17; Laws 2011, LB390, § 10; Laws 2012, LB817, § 4.

47-628 Community correctional programming; condition of probation.

(1) A sentencing judge may sentence an offender to probation conditioned upon community correctional programming.

(2) A sentence to a community correctional program or facility shall be imposed as a condition of probation pursuant to the Nebraska Probation Administration Act. The court may modify the sentence of an offender serving a sentence in a community correctional program in the same manner as if the offender had been placed on probation.

(3) The Office of Probation Administration shall utilize community correctional facilities and programs as appropriate.

Source: Laws 2003, LB 46, § 40; Laws 2011, LB390, § 11.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

47-629 Community correctional programming; paroled offenders.

(1) The Board of Parole may parole an offender to a community correctional facility or program pursuant to guidelines developed by the division.

(2) The Department of Correctional Services and the Office of Parole Administration shall utilize community correctional facilities and programs as appropriate.

Source: Laws 2003, LB 46, § 41; Laws 2011, LB390, § 12.

47-630 Repealed. Laws 2011, LB 390, § 39.

47-631 Repealed. Laws 2011, LB 390, § 39.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

(1) The Community Corrections Uniform Data Analysis Cash Fund is created. Except as provided in subsections (2) and (3) of this section, the fund shall be within the Nebraska Commission on Law Enforcement and Criminal Justice, shall be administered by the division, and shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects. The fund shall consist of money collected pursuant to section 47-633.

(2) Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) The State Treasurer shall transfer the following amounts from the Community Corrections Uniform Data Analysis Cash Fund to the Violence Prevention Cash Fund:

(a) Two hundred thousand dollars on July 1, 2011, or as soon thereafter as administratively possible; and

(b) Two hundred thousand dollars on July 1, 2012, or as soon thereafter as administratively possible.

(4) Any money in the Community Corrections Uniform Data Analysis Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6; Laws 2009, LB63, § 31; Laws 2009, First Spec. Sess., LB3, § 23; Laws 2011, LB378, § 21; Laws 2011, LB390, § 13.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

47-634 Receipt of funds by local entity; local advisory committee required; plan required.

For a local entity to receive funds under the Community Corrections Act, the division shall ensure there is a local advisory committee made up of a broad base of community members concerned with the justice system. Submission of a detailed plan including a budget, program standards, and policies as developed by the local advisory committee shall be required as set forth by the

division. Such funds shall be used for the implementation of the recommendations of the division, the expansion of sentencing options, the education of the public, the provision of supplemental community-based corrections programs, and the promotion of coordination between state and county community-based corrections programs.

Source: Laws 2006, LB 1113, § 48; Laws 2011, LB390, § 14.

47-635 Repealed. Laws 2011, LB 390, § 39.

47-636 Repealed. Laws 2011, LB 390, § 39.

47-637 Repealed. Laws 2011, LB 390, § 39.

47-638 Repealed. Laws 2011, LB 390, § 39.

47-639 Repealed. Laws 2011, LB 390, § 39.

ARTICLE 7 MEDICAL SERVICES

Section

47-703. Payment by governmental agency; when; notice to provider.

47-703 Payment by governmental agency; when; notice to provider.

(1) Upon a showing that reimbursement from the sources enumerated in section 47-702 is not available, in whole or in part, the costs of medical services shall be paid by the appropriate governmental agency. Such payment shall be made within ninety days after such showing. For purposes of this section, a showing shall be deemed sufficient if a provider of medical services signs an affidavit stating that (a) in the case of an insurer, health maintenance organization, preferred provider organization, or other similar source, a written denial of payment has been issued or (b) in all other cases, efforts have been made to identify sources and to collect from those sources and more than one hundred eighty days have passed or the normal collection efforts are exhausted since the medical services were rendered but full payment has not been received. Such affidavit shall be forwarded to the appropriate governmental agency. In no event shall the provider of medical services be required to file a suit in a court of law or retain the services of a collection agency to satisfy the requirement of showing that reimbursement is not available pursuant to this section.

(2) In the case of medical services necessitated by injuries or wounds suffered during the course of apprehension or arrest, the appropriate governmental agency chargeable for the costs of medical services shall be the apprehending or arresting agency and not the agency responsible for operation of the institution or facility in which the recipient of the services is lodged. In all other cases, the appropriate governmental agency shall be the agency responsible for operation of the institution or facility in which the recipient of the services is lodged, except that when the agency is holding the individual solely for another jurisdiction, the agency may, by contract or otherwise, seek reimbursement from the other jurisdiction for the costs of the medical services provided to the individual being held for that jurisdiction.

(3) Except as provided in section 47-705, a governmental agency shall not be responsible for paying the costs of any medical services provided to an individ-

ual if such services are provided after he or she is released from the legal custody of the governmental agency or when the individual is released on parole.

(4) Any governmental agency requesting medical services for an individual who is arrested, detained, taken into custody, or incarcerated shall notify the provider of such services of (a) all information possessed by the agency concerning potential sources of payment and (b) the name of the appropriate governmental agency pursuant to subsection (2) of this section.

Source: Laws 1999, LB 112, § 3; Laws 2012, LB881, § 1.



LABOR

CHAPTER 48
LABOR

Article.

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 - Part II—Elective Compensation.
 - (c) Schedule of Compensation. 48-120 to 48-126.01.
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ARTICLE 1

WORKERS' COMPENSATION

PART 1. COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

Section

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PART 1

COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

48-101.01 Mental injuries and mental illness; first responder; compensation; when.

(1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder if such first responder:

(a) Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not

considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(3) For purposes of this section, first responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 2010, LB780, § 1; Laws 2012, LB646, § 2.

Note: For applicability of this section, see section 48-1,111.

PART II

ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the

cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Source: Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122,

§ 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1; Laws 2009, LB195, § 51; Laws 2011, LB152, § 1.

48-120.04 Diagnostic Related Group inpatient hospital fee schedule; trauma services inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.

(1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For inpatient trauma discharges on or after January 1, 2012, the trauma services inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(4) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low-income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(d) Trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability;

(e) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent except for inpatient hospital trauma services; and

(f) Workers' Compensation Trauma Factor for inpatient hospital trauma services means the Current Medicare Factor for each hospital multiplied by one hundred sixty percent.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section. Claims for inpatient trauma services prior to January 1, 2012, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. Claims for inpatient trauma services on or after January 1, 2012, for Diagnostic Related Groups subject to the Diagnostic Related Group inpatient hospital fee schedule shall be reimbursed under the trauma services inpatient hospital fee schedule established in this section, except as otherwise provided in subdivision (1)(d) of section 48-120.

(6) The trauma services inpatient hospital fee schedule shall be established by the following methodology:

(a) The trauma services reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Trauma Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the trauma services reimbursement amount calculated in subdivision (6)(a) of this section multiplied by one and one-quarter;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the trauma services reimbursement amount calculated in subdivision (6)(a) of this section plus sixty-five percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the trauma services reimbursement amount calculated in subdivision (6)(a) of this section.

(7) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section.

(8) For charges for all other stays or services that are not reimbursed under the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(9) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(10) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(11) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group, the number of claims for each Diagnostic Related Group that included trauma services, the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group, and the number of times billed charges exceeded the Stop-Loss Threshold amount for each trauma service.

(12) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (10) of this section.

Source: Laws 2007, LB588, § 2; Laws 2009, LB630, § 2; Laws 2010, LB872, § 1; Laws 2011, LB152, § 2.

48-122 Compensation; injuries causing death; amount and duration of payments; computation of wages; expenses of burial; alien dependents.

(1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of injury, the compensation, subject to section 48-123, shall be not more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) Upon the death of an employee, resulting through personal injuries as defined in section 48-151, whether or not there are dependents entitled to compensation, the reasonable expenses of burial, not exceeding ten thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there are no dependents, then to his or her personal representative.

(4) Compensation under the Nebraska Workers' Compensation Act to alien dependents who are not residents of the United States shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5) The consul general, consul, vice consul general, or vice consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul general, consul, vice consul general, or vice consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee. Such consular officer, or his or her representative, residing in the State of Nebraska, shall have in behalf of such nonresident dependents, the exclusive right to adjust and settle all claims for compensation provided by the Nebraska Workers' Compensation Act, and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

Source: Laws 1913, c. 198, § 22, p. 588; R.S.1913, § 3663; Laws 1917, c. 85, § 8, p. 205; Laws 1919, c. 91, § 3, p. 232; C.S.1922, § 3045; C.S.1929, § 48-122; Laws 1935, c. 57, § 40, p. 209; C.S.Supp.,1941, § 48-122; R.S.1943, § 48-122; Laws 1945, c. 112, § 2, p. 361; Laws 1949, c. 160, § 2, p. 406; Laws 1951, c. 152, § 2, p. 620; Laws 1953, c. 162, § 2, p. 509; Laws 1955, c. 186, § 2, p. 530; Laws 1957, c. 203, § 2, p. 713; Laws 1957, c. 204, § 2, p. 719; Laws 1959, c. 223, § 2, p. 787; Laws 1963, c. 284,

§ 2, p. 850; Laws 1963, c. 285, § 2, p. 858; Laws 1965, c. 279, § 2, p. 803; Laws 1967, c. 288, § 2, p. 786; Laws 1969, c. 393, § 2, p. 1381; Laws 1971, LB 320, § 2; Laws 1973, LB 193, § 2; Laws 1974, LB 710, § 2; Laws 1975, LB 198, § 2; Laws 1977, LB 275, § 2; Laws 1978, LB 446, § 2; Laws 1979, LB 114, § 2; Laws 1981, LB 234, § 1; Laws 1983, LB 158, § 2; Laws 1985, LB 608, § 2; Laws 1986, LB 811, § 39; Laws 1997, LB 853, § 1; Laws 2012, LB738, § 1.

48-125 Compensation; method of payment; delay; appeal; attorney's fees; interest.

(1)(a) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(2)(a) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers.

(b) If the employer files an appeal from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the Court of Appeals or Supreme Court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(c) If the employee files an appeal from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an appeal from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the Court of Appeals or Supreme Court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(d) A reasonable attorney's fee allowed pursuant to this subsection shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Source: Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws 1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB 360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4; Laws 2009, LB630, § 3; Laws 2011, LB151, § 1.

48-126.01 Wages or compensation rate; basis of computation.

(1)(a) In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, or any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which military forces, law enforcement reserve force, or emergency management agency, organization, or team is organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, agency, organization, or team, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121.

(b) If a member or person under subdivision (1)(a) of this section is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01.

(c) If the wages received for the performance of duties as a member of such military forces, reserve force, agency, organization, or team exceed the wages received from a regular employer, such member shall be entitled to a rate of

compensation based upon wages received as a member of such military forces, reserve force, agency, organization, or team.

(2) In determining the compensation rate to be paid any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation or any member of a volunteer emergency medical service, which fire department or emergency medical service is organized under the laws of the State of Nebraska, for injuries resulting in disability or death received in the performance of his or her duties as a member of such fire department or emergency medical service, it shall be deemed and assumed that his or her wages are in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01 or the wages received by such member from his or her regular employment, whichever is greater. Any member of such volunteer fire department or volunteer emergency medical service shall not lose his or her volunteer status under the Nebraska Workers' Compensation Act if such volunteer receives reimbursement for expenses, reasonable benefits, or a nominal fee, a nominal per call fee, a nominal per shift fee, or combination thereof. It shall be conclusively presumed that a fee is nominal if the fee does not exceed twenty percent of the amount that otherwise would be required to hire a permanent employee for the same services.

Source: Laws 1913, c. 198, § 26, p. 592; R.S.1913, § 3667; Laws 1917, c. 85, § 10, p. 208; C.S.1922, § 3049; Laws 1927, c. 39, § 2, p. 171; C.S.1929, § 48-126; Laws 1935, c. 57, § 39, p. 208; C.S.Supp.,1941, § 48-126; R.S.1943, § 48-126; Laws 1953, c. 163, § 1(2), p. 513; Laws 1955, c. 186, § 3, p. 532; Laws 1959, c. 224, § 1, p. 790; Laws 1961, c. 233, § 2, p. 691; Laws 1967, c. 289, § 2, p. 790; Laws 1969, c. 394, § 1, p. 1384; Laws 1973, LB 239, § 3; Laws 1973, LB 25, § 2; Laws 1976, LB 782, § 15; Laws 1986, LB 528, § 7; Laws 1996, LB 43, § 9; Laws 1997, LB 138, § 39; Laws 1999, LB 216, § 7; Laws 2014, LB961, § 10.
Operative date July 18, 2014.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-139 Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; filing of release; form; contents; payment; fees.

(1)(a) Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability under the Nebraska Workers' Compensation Act shall be commuted to one or more lump-sum payments, such settlement shall be submitted to the Nebraska Workers' Compensation Court for approval as provided in subsection (2) of this section if:

(i) The employee is not represented by counsel;

(ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;

(iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or

(v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, and such other matters as may be required by the compensation court. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same. If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. Upon paying the amount approved by the compensation court, the employer (i) shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties, and (ii) shall be entitled to a duly executed release. Upon filing the release, the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.

(3) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court in accordance with this subsection that is signed and verified by the employee and the employee's attorney. The release shall be made on a form approved by the compensation court and shall contain a statement signed and verified by the employee that:

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

(i) The right to receive weekly disability benefits, both temporary and permanent;

(ii) The right to receive vocational rehabilitation services;

(iii) The right to receive future medical, surgical, and hospital services as provided in section 48-120, unless such services are specifically excluded from the release; and

(iv) The right to ask a judge of the compensation court to decide the parties' rights and obligations;

(b) The employee is not eligible for medicare, is not a current medicare beneficiary, and does not have a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(c) There are no medical, surgical, or hospital expenses incurred for treatment of the injury which have been paid by medicaid and not reimbursed to medicaid by the employer as part of the settlement; and

(d) There are no medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid after the settlement.

(4) A release filed with the compensation court in accordance with subsection (3) of this section shall be final and conclusive as to all rights waived in the release unless procured by fraud. Amounts to be paid by the employer to the employee pursuant to such release shall be paid within thirty days of filing the release with the compensation court. Fifty percent shall be added for payments owed to the employee if made after thirty days after the date the release is filed with the compensation court. Upon making payment owed by the employer as set forth in the release, such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release, and the court shall enter an order of dismissal with prejudice as to all rights waived in the release.

(5) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Source: Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p. 199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-139; Laws 1951, c. 153, § 1, p. 623; Laws 1975, LB 187, § 4; Laws 1977, LB 126, § 3; Laws 1978, LB 649, § 3; Laws 1986, LB 811, § 57; Laws 1993, LB 757, § 10; Laws 2002, LB 417, § 3; Laws 2009, LB630, § 6; Laws 2014, LB961, § 11.
Operative date July 18, 2014.

48-145.01 Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.

(1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and shall be personally liable jointly and severally with such employer for any compensation which

may accrue under the act in respect to any injury which may occur to any employee of such employer while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, the employer may be enjoined from doing business in this state until the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the compensation court pursuant to subsection (2) of this section shall be in accordance with sections 48-182 and 48-185.

Source: Laws 1971, LB 572, § 18; Laws 1977, LB 40, § 272; Laws 1986, LB 811, § 68; Laws 1993, LB 121, § 283; Laws 1999, LB 331, § 1; Laws 2005, LB 13, § 9; Laws 2011, LB151, § 2.

PART IV

NEBRASKA WORKERS' COMPENSATION COURT

48-153 Judges; number; term; qualifications; continuance in office; prohibition on holding other office or pursuing other occupation.

The Nebraska Workers' Compensation Court shall consist of seven judges. Judges holding office on August 30, 1981, shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on the first Thursday after the first Tuesday in January immediately following the first general election at which they are retained in office after August 30, 1981. Judge of the Nebraska Workers' Compensation Court shall include any person appointed to the office of judge of the Nebraska Workmen's Compensation Court prior to July 17, 1986, pursuant to Article V,

section 21, of the Nebraska Constitution. Any person serving as a judge of the Nebraska Workmen's Compensation Court immediately prior to July 17, 1986, shall be a judge of the Nebraska Workers' Compensation Court. The right of judges of the compensation court to continue in office shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office thereafter shall be for six years beginning on the first Thursday after the first Tuesday in January immediately following their retention at such election. In case of a vacancy occurring in the Nebraska Workers' Compensation Court, the same shall be filled in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections 24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation, or removal for cause. No judge of the compensation court shall, during his or her tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his or her duties as such judge, or serve on or under any committee of any political party.

Source: Laws 1935, c. 57, § 2, p. 188; C.S.Supp.,1941, § 48-163; R.S. 1943, § 48-153; Laws 1945, c. 113, § 1, p. 363; Laws 1963, c. 288, § 1, p. 865; Laws 1965, c. 280, § 2, p. 806; Laws 1967, c. 292, § 2, p. 798; Laws 1975, LB 187, § 10; Laws 1978, LB 649, § 4; Laws 1979, LB 237, § 5; Laws 1981, LB 111, § 4; Laws 1983, LB 18, § 3; Laws 1986, LB 811, § 81; Laws 1988, LB 868, § 2; Laws 2011, LB151, § 3.

48-155 Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.

The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

Source: Laws 1935, c. 57, § 4, p. 189; C.S.Supp.,1941, § 48-165; R.S. 1943, § 48-155; Laws 1945, c. 113, § 2, p. 364; Laws 1959, c. 225, § 1, p. 791; Laws 1969, c. 396, § 1, p. 1386; Laws 1986, LB 811, § 84; Laws 1992, LB 360, § 15; Laws 2000, LB 1221, § 10; Laws 2005, LB 13, § 14; Laws 2011, LB151, § 4.

48-156 Judges; quorum; powers.

A majority of the judges of the Nebraska Workers' Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except when the statute or a rule adopted by the compensation court permits one judge thereof to act. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the compensation court, except that a majority vote of all the judges shall be required to adopt rules and regulations.

Source: Laws 1935, c. 57, § 5, p. 190; C.S.Supp.,1941, § 48-166; R.S. 1943, § 48-156; Laws 1945, c. 113, § 3, p. 364; Laws 1965, c. 280, § 3, p. 807; Laws 1983, LB 18, § 4; Laws 1986, LB 811, § 86; Laws 1992, LB 360, § 16; Laws 1999, LB 216, § 13; Laws 2011, LB151, § 5.

48-162.03 Compensation court; motions; powers.

(1) The Nebraska Workers' Compensation Court or any judge thereof may rule upon any motion addressed to the court by any party to a suit or proceeding, including, but not limited to, motions for summary judgment or other motions for judgment on the pleadings but not including motions for new trial. Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.

(2) Parties to a dispute which might be the subject of an action under the Nebraska Workers' Compensation Act may file a motion for an order regarding the dispute without first filing a petition.

(3) If notice of a motion is required, the notice shall be in writing and shall state: (a) The names of the parties to the action, proceeding, or dispute in which it is to be made; (b) the name of the judge before whom it is to be made; (c) the time and place of hearing; and (d) the nature and terms of the order or orders to be applied for. Notice shall be served a reasonable time before the hearing as provided in the rules of the compensation court.

Source: Laws 1997, LB 128, § 5; Laws 2013, LB141, § 1.

48-166 Compensation court; annual report; contents.

On or before January 1 of each year, the Nebraska Workers' Compensation Court shall submit electronically an annual report to the Clerk of the Legislature for the past fiscal year which shall include (1) pertinent information regarding settlements and awards made by the compensation court, (2) the causes of the accidents leading to the injuries for which the settlements and awards were made, (3) a statement of the total expense of the compensation court, (4) any other matters which the compensation court deems proper to include, and (5) any recommendations it may desire to make.

Source: Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-166; Laws 1945, c. 113, § 6, p. 366; Laws 1955, c. 231, § 7, p. 720; Laws 1986, LB 811, § 99; Laws 1999, LB 216, § 16; Laws 2013, LB222, § 16.

48-167 Compensation court; record.

The Nebraska Workers' Compensation Court shall keep and maintain a full and true record of all proceedings, documents, or papers ordered filed, rules and regulations, and decisions or orders.

Source: Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 205; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-167; Laws 1945, c. 113, § 7, p. 366; Laws 1986, LB 811, § 100; Laws 2011, LB151, § 6.

48-170 Compensation court; orders; awards; when binding.

Every order and award of the Nebraska Workers' Compensation Court shall be binding upon each party at interest unless an appeal has been filed with the compensation court within thirty days after the date of entry of the order or award.

Source: Laws 1917, c. 85, § 29, p. 222; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-170; Laws 1967, c. 294, § 1, p. 800; Laws 1975, LB 187, § 12; Laws 1986, LB 811, § 103; Laws 1992, LB 360, § 19; Laws 1999, LB 43, § 24; Laws 2011, LB151, § 7.

48-175.01 Nonresident employer; service of process; manner of service; continuance; record.

(1)(a) The performance of work in the State of Nebraska (i) by an employer, who is a nonresident of the State of Nebraska, (ii) by any resident employer who becomes a nonresident of this state after the occurrence of an injury to an employee, or (iii) by any agent of such an employer shall be deemed an appointment by such employer of the clerk of the Nebraska Workers' Compensation Court as a true and lawful attorney and agent upon whom may be served all legal processes in any action or proceeding against him or her, arising out of or under the provisions of the Nebraska Workers' Compensation Act, and such performance of work shall be a signification of the employer's agreement that any such process, which is so served in any action against him or her, shall be of the same legal force and validity as if served upon him or her personally within this state. The appointment of agent, thus made, shall not be revocable by death but shall continue and be binding upon the executor or administrator of such employer.

(b) For purposes of this section, performance of work shall include, but not be limited to, situations in which (i) the injury or injury resulting in death occurred within this state, (ii) the employment was principally localized within this state, or (iii) the contract of hire was made within this state.

(2) Service of such process, as referred to in subsection (1) of this section, shall be made by serving a copy thereof upon the clerk of the Nebraska Workers' Compensation Court, personally in his or her office or upon someone who, previous to such service, has been designated in writing by the clerk of the Nebraska Workers' Compensation Court as the person or one of the persons with whom such copy may be left for such service upon the clerk of the Nebraska Workers' Compensation Court, and such service shall be sufficient service upon the employer. In making such service, a copy of the petition and a copy of the process shall, within ten days after the date of service, be sent by the clerk of the Nebraska Workers' Compensation Court, or such person acting for him or her in his or her office, to the defendant by registered or certified

mail addressed to the defendant's last-known address, and the defendant's return receipt and affidavit of the clerk of the Nebraska Workers' Compensation Court, or such person in his or her office acting for him or her, of compliance therewith shall be appended to such petition and filed in the office of the clerk of the Nebraska Workers' Compensation Court. The date of the mailing and the date of the receipt of the return card aforesaid shall be properly endorsed on such petition and filed by the clerk of the Nebraska Workers' Compensation Court, or someone acting for him or her.

(3) The Nebraska Workers' Compensation Court shall, on its own motion, order such continuance of answer day and trial date, as may to the compensation court seem necessary to afford the defendant reasonable opportunity to plead and to defend. No such continuance shall be for more than ninety days except for good cause shown.

(4) It shall be the duty of the clerk of the Nebraska Workers' Compensation Court to keep a record of all processes so served, in accordance with subsections (1) and (2) of this section, which record shall show the date of such service, and to so arrange and index such record as to make the same readily accessible and convenient for inspection.

Source: Laws 1957, c. 202, § 2, p. 708; Laws 1973, LB 150, § 2; Laws 1986, LB 811, § 108; Laws 2011, LB151, § 8.

48-177 Hearing; judge; place; dismissal; procedure; manner of conducting hearings.

(1) At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state.

(2) Any such cause may be dismissed without prejudice to a future action (a) by the plaintiff, if represented by legal counsel, before the final submission of the case to the compensation court or (b) by the compensation court upon a stipulation of the parties that a dispute between the parties no longer exists.

(3) Notwithstanding subsection (1) of this section, all nonevidentiary hearings, and any evidentiary hearings approved by the compensation court and by stipulation of the parties, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the state as ordered by the court and in a manner that ensures the preservation of an accurate record. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 193, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-177; Laws 1945, c. 113, § 8, p. 366; Laws 1949, c. 161, § 5, p. 413; Laws 1975, LB 97, § 8; Laws 1978, LB 649, § 8; Laws 1986, LB 811, § 109; Laws 1997, LB 128, § 6; Laws 2005, LB 13, § 29; Laws 2011, LB151, § 9.

48-178 Hearing; judgment; when conclusive; record of proceedings; costs; payment.

The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon appeal as hereinafter provided. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the employer's workers' compensation insurer. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-178; Laws 1945, c. 113, § 9, p. 367; Laws 1986, LB 811, § 110; Laws 1992, LB 360, § 20; Laws 2005, LB 238, § 14; Laws 2011, LB151, § 10.

48-179 Repealed. Laws 2011, LB 151, § 20.

48-180 Findings, order, award, or judgment; modification; effect.

The Nebraska Workers' Compensation Court may, on its own motion or on the motion of any party, modify or change its findings, order, award, or judgment at any time before appeal and within fourteen days after the date of such findings, order, award, or judgment. The time for appeal shall not be lengthened because of the modification or change unless the correction substantially changes the result of the award.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-180; Laws 1986, LB 811, § 113; Laws 1992, LB 360, § 22; Laws 2011, LB151, § 11.

48-181 Repealed. Laws 2011, LB 7, § 1.

48-182 Notice of appeal; bill of exceptions; requirements; waiver of payment; when; extension of time; filing of order.

In case either party at interest refuses to accept any final order of the Nebraska Workers' Compensation Court, such party may, within thirty days thereafter, file with the compensation court a notice of appeal and at the same time the notice of appeal is filed, file with the compensation court a praecipe for a bill of exceptions. Within seven weeks from the date the notice of appeal is filed, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workers' Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensa-

tion court at the hearing, which transcribed copy when certified to by the person who made or transcribed the record shall constitute the bill of exceptions. The transcript and bill of exceptions shall be paid for by the party ordering the same, except that upon the affidavit of any claimant for workers' compensation, filed with or before the praecipe, that he or she is without means with which to pay and unable to secure such means, payment may, in the discretion of the compensation court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workers' Compensation Court within seven weeks from the date the notice of appeal is filed, the Supreme Court may, on the motion of any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workers' Compensation Court by the party requesting such extension within five days after the date of such order.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 194, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-182; Laws 1967, c. 294, § 2, p. 801; Laws 1971, LB 252, § 1; Laws 1973, LB 192, § 1; Laws 1975, LB 187, § 13; Laws 1986, LB 811, § 114; Laws 1986, LB 529, § 51; Laws 1991, LB 732, § 111; Laws 1992, LB 360, § 23; Laws 2011, LB151, § 12; Laws 2013, LB141, § 2.

48-185 Appeal; procedure; judgment by Nebraska Workers' Compensation Court; effect; grounds for modification or reversal.

Any appeal from the judgment of the Nebraska Workers' Compensation Court shall be prosecuted and the procedure, including the designation of parties, handling of costs and the amounts thereof, filing of briefs, certifying the opinion of the Supreme Court or decision of the Court of Appeals to the compensation court, handling of the bill of exceptions, and issuance of the mandate, shall be in accordance with the general laws of the state and procedures regulating appeals in actions at law from the district courts except as otherwise provided in section 48-182 and this section. The proceedings to obtain a reversal, vacation, or modification of judgments, awards, or final orders made by the compensation court shall be by filing in the office of the clerk of the Nebraska Workers' Compensation Court, within thirty days after the entry of such judgment, decree, or final order, a notice of appeal signed by the appellant or his or her attorney of record. No motion for a new trial shall be filed. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal shall have been filed in the office of the clerk of the Nebraska Workers' Compensation Court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of

such notice of appeal shall be deemed jurisdictional. The clerk of the Nebraska Workers' Compensation Court shall forthwith forward a certified copy of such notice of appeal to the Clerk of the Supreme Court, whereupon the Clerk of the Supreme Court shall forthwith docket such appeal. Within thirty days after the date of filing of notice of appeal, the clerk of the Nebraska Workers' Compensation Court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The transcript shall contain the judgment, decree, or final order sought to be reversed, vacated, or modified and all pleadings filed with such clerk. Neither the form nor the substance of such transcript shall affect the jurisdiction of the appellate court. Such appeal shall be perfected within thirty days after the entry of judgment by the compensation court, the cause shall be advanced for argument before the appellate court, and the appellate court shall render its judgment and write an opinion, if any, in such cases as speedily as possible. The judgment made by the compensation court shall have the same force and effect as a jury verdict in a civil case. A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers, (2) the judgment, order, or award was procured by fraud, (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award, or (4) the findings of fact by the compensation court do not support the order or award.

Source: Laws 1935, c. 57, § 13, p. 195; C.S.Supp., 1941, § 48-174; R.S. 1943, § 48-185; Laws 1953, c. 165, § 1, p. 517; Laws 1957, c. 207, § 1, p. 726; Laws 1975, LB 187, § 14; Laws 1986, LB 811, § 115; Laws 1986, LB 529, § 52; Laws 1991, LB 732, § 112; Laws 1992, LB 360, § 24; Laws 1999, LB 43, § 25; Laws 2011, LB151, § 13.

48-191 Time; how computed.

Notwithstanding any more general or special law respecting the subject matter hereof, whenever the last day of the period within which a party to an action may file any document or pleading with the Nebraska Workers' Compensation Court, or take any other action with respect to a claim for compensation, falls on a Saturday, a Sunday, any day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or any day declared by statutory enactment or proclamation of the Governor to be a holiday, the next following day, which is not a Saturday, a Sunday, a day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or a day declared by such enactment or proclamation to be a holiday, shall be deemed to be the last day for filing any such document or pleading or taking any such other action with respect to a claim for compensation.

Source: Laws 1955, c. 187, § 1, p. 535; Laws 1986, LB 811, § 120; Laws 2003, LB 760, § 16; Laws 2011, LB151, § 14.

PART V

CLAIMS AGAINST THE STATE

48-1,103 Workers' Compensation Claims Revolving Fund; established; deficiency; notify Legislature; investment.

There is hereby established in the state treasury a Workers' Compensation Claims Revolving Fund, to be administered by the Risk Manager, from which all workers' compensation costs, including prevention and administration, shall be paid. The fund may also be used to pay the costs of administering the Risk Management Program. The fund shall receive deposits from assessments against state agencies charged by the Risk Manager to pay for workers' compensation costs. When the amount of money in the Workers' Compensation Claims Revolving Fund is not sufficient to pay any awards or judgments under sections 48-192 to 48-1,109, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the Workers' Compensation Claims Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1971, LB 390, § 12; Laws 1981, LB 273, § 12; Laws 1986, LB 811, § 130; Laws 1994, LB 1211, § 3; Laws 1995, LB 7, § 45; Laws 2011, LB378, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

48-1,104 Risk Manager; report; contents.

The Risk Manager shall submit electronically a report to the Clerk of the Legislature by January 15 of each year, which report shall include the number of claims for which payments have been made, the amounts paid by categories of medical, hospital, compensation, and other costs separated by the agency and program or activity under which the claim arose. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the Risk Manager.

Source: Laws 1971, LB 390, § 13; Laws 1972, LB 1334, § 3; Laws 1977, LB 399, § 1; Laws 1979, LB 322, § 16; Laws 1981, LB 545, § 52; Laws 1981, LB 273, § 13; Laws 2012, LB782, § 59.

PART VI

NAME OF ACT AND APPLICABILITY OF CHANGES

48-1,110 Act, how cited.

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

Source: Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3; Laws 2011, LB151, § 16.

48-1,111 Repealed. Laws 2013, LB21, § 2.

48-1,112 Laws 2011, LB151, changes; applicability.

Cases pending before the Nebraska Workers' Compensation Court on August 27, 2011, in which a hearing on the merits has been held prior to such date

shall not be affected by the changes made in sections 48-125, 48-145.01, 48-155, 48-156, 48-170, 48-178, 48-180, 48-182, and 48-185 by Laws 2011, LB151. Any cause of action not in suit on August 27, 2011, and any cause of action in suit in which a hearing on the merits has not been held prior to such date shall follow the procedures in such sections as amended by Laws 2011, LB151.

Source: Laws 2011, LB151, § 15.

PART VIII

COST-BENEFIT ANALYSIS

48-1,118 Cost-benefit analysis and review of Laws 1993, LB 757; reports.

On January 1, 1997, the Governor shall direct the Director of Insurance and the Commissioner of Labor to conduct and complete a cost-benefit analysis and a review of the effectiveness of the changes made by Laws 1993, LB 757, to control or reduce the cost of workers' compensation premiums. Information for the study may be elicited from interested persons and from the Nebraska Workers' Compensation Court. The director and the commissioner shall submit a report, which may include recommendations for further legislation, to the chairperson of the Business and Labor Committee of the Legislature, the Clerk of the Legislature, and the Governor by October 1, 1997. The Business and Labor Committee of the Legislature shall hold a public hearing on the study and shall submit a report to the Legislature by December 1, 1997. The Governor or the Legislature, by resolution, may require a similar study in 1999 and every two years thereafter. Any report submitted to the committee and the Clerk of the Legislature shall be submitted electronically.

Source: Laws 1993, LB 757, § 40; Laws 2012, LB782, § 60.

ARTICLE 2

GENERAL PROVISIONS

Section

- 48-201. Current or former employer; disclosure of information; immunity from civil liability; consent; form; period valid; applicability of section.
- 48-202. Public employer; applicant; disclosure of criminal record or history; limitation.
- 48-225. Veterans preference; terms, defined.
- 48-227. Veterans preference; examination or numerical scoring; notice and application; statement; veteran; duty; notice; contents.

48-201 Current or former employer; disclosure of information; immunity from civil liability; consent; form; period valid; applicability of section.

(1)(a) A current or former employer may disclose the following information about a current or former employee's employment history to a prospective employer of the current or former employee upon receipt of written consent from the current or former employee:

- (i) Date and duration of employment;
- (ii) Pay rate and wage history on the date of receipt of written consent;
- (iii) Job description and duties;

(iv) The most recent written performance evaluation prepared prior to the date of the request and provided to the employee during the course of his or her employment;

(v) Attendance information;

(vi) Results of drug or alcohol tests administered within one year prior to the request;

(vii) Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee;

(viii) Whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and

(ix) Whether the employee is eligible for rehire.

(b) The current or former employer disclosing such information shall be presumed to be acting in good faith and shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing by a preponderance of the evidence that the information disclosed by the current or former employer was false, and the current or former employer had knowledge of its falsity or acted with malice or reckless disregard for the truth.

(2)(a) The consent required in subsection (1) of this section shall be on a separate form from the application form or, if included in the application form, shall be in bold letters and in larger typeface than the largest typeface in the text of the application form. The consent form shall state, at a minimum, language similar to the following:

I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer).

(b) The consent must be signed and dated by the applicant.

(c) The consent will be valid for no longer than six months.

(3) This section shall also apply to any current or former employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this section.

(4)(a) This section does not require any prospective employer to request employment history on a prospective employee and does not require any current or former employer to disclose employment history to any prospective employer.

(b) Except as specifically amended in this section, the common law of this state remains unchanged as it relates to providing employment information on current and former employees.

(c) This section applies only to causes of action accruing on and after July 19, 2012.

(5) The immunity conferred by this section shall not apply when an employer discriminates or retaliates against an employee because the employee has exercised or is believed to have exercised any federal or state statutory right or undertaken any action encouraged by the public policy of this state.

Source: Laws 2012, LB959, § 1.

48-202 Public employer; applicant; disclosure of criminal record or history; limitation.

(1) Except as otherwise provided in this section, a public employer shall not ask an applicant for employment to disclose, orally or in writing, information

concerning the applicant's criminal record or history, including any inquiry on any employment application, until the public employer has determined the applicant meets the minimum employment qualifications.

(2) This section does not apply to any law enforcement agency, to any position for which a public employer is required by federal or state law to conduct a criminal history record information check, or to any position for which federal or state law specifically disqualifies an applicant with a criminal background.

(3)(a) This section does not prevent a public employer that is a school district or educational service unit from requiring an applicant for employment to disclose an applicant's criminal record or history relating to sexual or physical abuse.

(b) This section does not prevent a public employer from preparing or delivering an employment application that conspicuously states that a criminal history record information check is required by federal law, state law, or the employer's policy.

(c) This section does not prevent a public employer from conducting a criminal history record information check after the public employer has determined that the applicant meets the minimum employment qualifications.

(4) For purposes of this section:

(a) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime, the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state, and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(b) Public employer means an agency or department of this state or of any political subdivision of this state.

Source: Laws 2014, LB907, § 12.

Operative date July 18, 2014.

48-225 Veterans preference; terms, defined.

For purposes of sections 48-225 to 48-231:

(1) Veteran means:

(a) A person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions); or

(b) The spouse of a veteran who has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs;

(2) Full-time duty means duty during time of war or during a period recognized by the United States Department of Veterans Affairs as qualifying for veterans benefits administered by the department and that such duty from January 31, 1955, to February 28, 1961, exceeded one hundred eighty days unless lesser duty was the result of a service-connected or service-aggravated disability;

(3) Disabled veteran means an individual who has served on active duty in the armed forces of the United States, has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) therefrom, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department; and

(4) Preference eligible means any veteran as defined in this section.

Source: Laws 1969, c. 751, § 1, p. 2826; Laws 1991, LB 2, § 6; Laws 2001, LB 368, § 1; Laws 2005, LB 54, § 7; Laws 2014, LB588, § 2.

Operative date January 1, 2015.

48-227 Veterans preference; examination or numerical scoring; notice and application; statement; veteran; duty; notice; contents.

(1) Veterans who obtain passing scores on all parts or phases of an examination or numerical scoring shall have five percent added to their passing score if a claim for such preference is made on the application. An additional five percent shall be added to the passing score or numerical scoring of any disabled veteran.

(2) When no examination or numerical scoring is used, the preference shall be given to the qualifying veteran if two or more equally qualified candidates are being considered for the position.

(3) All notices of positions of employment available for veterans preference and all applications for such positions by the state or its governmental subdivisions shall state that the position is subject to a veterans preference.

(4) A veteran desiring to use a veterans preference shall provide the hiring authority with a copy of the veteran's Department of Defense Form 214, also known as the DD Form 214. A spouse of a veteran desiring to use a veterans preference shall provide the hiring authority with a copy of the veteran's Department of Defense Form 214, a copy of the veteran's disability verification from the United States Department of Veterans Affairs demonstrating a one hundred percent permanent disability rating, and proof of marriage to the veteran. Any marriage claimed for veteran preference must be valid under Nebraska law.

(5) Within thirty days after filling a position, veterans who have applied and are not hired shall be notified by regular mail, electronic mail, telephone call, or personal service that they have not been hired. Such notice also shall advise the veteran of any administrative appeal available.

Source: Laws 1969, c. 751, § 3, p. 2827; Laws 1997, LB 5, § 2; Laws 2005, LB 54, § 8; Laws 2014, LB588, § 3.

Operative date January 1, 2015.

ARTICLE 4

HEALTH AND SAFETY REGULATIONS

Section

48-436. Terms, defined.

48-437. High voltage lines; prohibited acts.

48-438. High voltage lines; tools, equipment, materials, or buildings; operation, movement, or erection; use; conditions.

48-436 Terms, defined.

For purposes of sections 48-436 to 48-442, unless the context otherwise requires:

(1) High voltage means a voltage in excess of six hundred volts, measured between conductors, or measured between the conductor and the ground; and

(2) Authorized and qualified persons includes employees of any electric utility, public power district, or public power and irrigation district with respect to the electrical systems of such utilities, employees of communications utilities, common carriers engaged in interstate commerce, state, county, or municipal agencies with respect to work relating to their facilities on the poles or structures of an electric utility or railway transportation system, employees of a railway transportation system or a metropolitan utilities district engaged in the normal operation of such system, and employees of a contractor with respect to work under his or her supervision when such work is being performed under contract for, or as an agent of, the owner of the above utilities, companies, or agencies, so long as all such persons meet the requirements for working near overhead high voltage conductors as provided in 29 C.F.R. 1910.269(a)(2)(ii) through 1910.269(a)(3), as such regulations existed on July 19, 2012.

Source: Laws 1969, c. 390, § 1, p. 1370; Laws 2012, LB997, § 1.

48-437 High voltage lines; prohibited acts.

(1) No person, firm, or corporation, or agent of such person, firm, or corporation, shall require or permit any employee, except an authorized and qualified person, to perform and no person, except an authorized and qualified person, shall perform any function within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442; or enter upon any land, building, or other premises, and there to engage in any excavation, demolition, construction, repair, or other operations, or to erect, install, operate, or store in or upon such premises any tools, machinery, equipment, materials, or structures, including house-moving, well-drilling, pile-driving, or hoisting equipment, within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442, unless and until danger from accidental contact with such high voltage conductors has been effectively guarded against in the manner prescribed in sections 48-436 to 48-442.

(2) No person except an authorized and qualified person shall manipulate overhead high voltage conductors or other components, including the poles and other structures, of an electric utility. Under no circumstances shall an authorized and qualified person work on the electrical system of an electric utility that he or she is not employed by unless written authorization has been obtained from such electric utility. This subsection shall not be construed to apply to activities performed by an authorized and qualified person employed by an electric utility on the electrical system of another electric utility when the nonowning or nonoperating electric utility has a written agreement with the owning and operating electric utility (a) providing for the joint use of or interconnection of the electrical systems of both the electric utilities or (b) approving authorized and qualified persons employed by the nonowning or

nonoperating electric utility to work on the electrical system of the owning or operating electric utility on an ongoing basis.

Source: Laws 1969, c. 390, § 2, p. 1371; Laws 2012, LB997, § 2.

48-438 High voltage lines; tools, equipment, materials, or buildings; operation, movement, or erection; use; conditions.

(1) Except as provided in subsections (2) and (3) of this section, the operation or erection of any tools, machinery, or equipment, or any part thereof capable of vertical, lateral, or swinging motion, or the handling or storage of any supplies, materials, or apparatus or the moving of any house or other building, or any part thereof, under, over, by, or near overhead high voltage conductors, shall be prohibited if, at any time during such operation or other manipulation, it is possible to bring such equipment, tools, materials, building, or any part thereof within ten feet of such overhead high voltage conductors, except where such high voltage conductors have been effectively guarded against danger from accidental contact, by any of the following:

(a) Erection of mechanical barriers to prevent physical contact with high voltage conductors;

(b) Deenergizing of the high voltage conductors and grounding where necessary; or

(c) Temporary relocation of overhead high voltage conductors.

(2) The minimum distance required by this section for cranes or other boom type equipment in transit with no load and with raiseable portions lowered shall be four feet.

(3) Nothing in sections 48-436 to 48-442 shall prohibit the moving of general farm equipment under high voltage conductors where clearances required by sections 48-436 to 48-442 are maintained.

(4) The activities performed as described in subdivisions (1)(a), (b), and (c) of this section shall be performed only by the owner or operator of the high voltage conductors unless written authorization has been obtained from such owner or operator. This subsection shall not be construed to apply to activities performed by an electric utility on high voltage conductors of another electric utility when the electric utilities have a written agreement (a) providing for joint use of poles or structures supporting the high voltage conductors of the electric utilities or (b) approving the nonowning electric utility's performance of the activities described in subdivisions (1)(a), (b), and (c) of this section on an ongoing basis on the owning or operating electric utility's high voltage conductors.

Source: Laws 1969, c. 390, § 3, p. 1371; Laws 2012, LB997, § 3.

ARTICLE 6

EMPLOYMENT SECURITY

Section

- 48-601. Act, how cited.
 48-604. Employment, defined.
 48-606. Commissioner; duties; powers; annual report; schedule of fees.
 48-621. Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.
 48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.

Section

- 48-622.02. Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use; Nebraska Training and Support Cash Fund; created; use; investment; Administrative Costs Reserve Account; created; use.
- 48-622.03. Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.
- 48-630. Claims; determinations by deputy.
- 48-631. Claims; redetermination; time; notice; appeal.
- 48-632. Claims; determination; notice; persons entitled; employer; rights; duties.
- 48-633. Repealed. Laws 2012, LB 1058, § 17.
- 48-634. Administrative appeal; notice; time allowed; hearing; parties.
- 48-636. Administrative appeals; decisions; conclusiveness.
- 48-637. Administrative appeals; decisions; effect in subsequent proceedings; certification of questions.
- 48-644. Benefits; payment; appeal not a supersedeas; reversal; effect.
- 48-652. Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.
- 48-655. Combined taxes; payments in lieu of contributions; collections; setoffs; interest; actions; setoff against federal income tax refund; procedure.
- 48-663.01. Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; penalty; levy authorized; procedure; failure or refusal to honor levy; liability.
- 48-665. Benefits; erroneous payments; recovery; setoff against federal income tax refund; procedure.
- 48-665.01. Benefits; unlawful payments from foreign state or government; recovery.
- 48-672. Short-time compensation program created.
- 48-673. Short-time compensation program; terms, defined.
- 48-674. Short-time compensation program; participation; application; form; contents.
- 48-675. Short-time compensation program; commissioner; decision; eligibility.
- 48-676. Short-time compensation program; plan; effective date; notice of approval; expiration; revocation; termination.
- 48-677. Short-time compensation program; plan; revocation; procedure; grounds; order.
- 48-678. Short-time compensation program; plan; modification; request; decision; employer; report.
- 48-679. Short-time compensation program; individual; eligibility.
- 48-680. Short-time compensation program; weekly benefit amount; provisions applicable to individuals.
- 48-681. Short-time compensation; charged to employer's experience account.
- 48-682. Short-time compensation; when considered exhaustee.
- 48-683. Short-time compensation program; department; funding; report.

48-601 Act, how cited.

Sections 48-601 to 48-683 shall be known and may be cited as the Employment Security Law.

Source: Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp.,1941, § 48-701; R.S.1943, § 48-601; Laws 1949, c. 163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB265, § 3; Laws 2010, LB1020, § 1; Laws 2014, LB961, § 12.

Operative date October 1, 2016.

48-604 Employment, defined.

As used in the Employment Security Law, unless the context otherwise requires, employment shall mean:

(1) Any service performed, including service in interstate commerce, for wages under a contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be deemed to be localized within a state if (i) the service is performed entirely within such state or (ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to the Employment Security Law if the commissioner approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to such law;

(b) Services of an individual wherever performed within the United States or Canada if (i) such service is not covered under the employment compensation law of any other state or Canada and (ii) the place from which the service is directed or controlled is in this state;

(c)(i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business in the United States is located in this state;

(B) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; the employer is a corporation or limited liability company which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of subdivisions (A) and (B) of this subdivision are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the laws of this state.

(ii) American employer, for the purposes of this subdivision, shall mean: (A) An individual who is a resident of the United States; (B) a partnership if two-

thirds or more of the partners are residents of the United States; (C) a trust if all the trustees are residents of the United States; or (D) a corporation or limited liability company organized under the laws of the United States or of any state.

(iii) The term United States for the purpose of this section includes the states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico;

(4)(a) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(7), and is not otherwise excluded under this section;

(b) Service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met: (i) The service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(8), and is not otherwise excluded under this section; and (ii) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c)(i) Service performed by an individual in agricultural labor as defined in subdivision (6)(a) of this section when such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(ii) For purposes of this subdivision:

(A) Any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, 29 U.S.C. 1801 et seq.; substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and such individual is not an employee of such other person within the meaning of any other provisions of this section;

(B) In case any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision (A) of this subdivision, such other person and not the crew leader shall be treated as the employer of such individual and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remunera-

tion paid to such individual by the crew leader, either on his or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person; and

(C) The term crew leader shall mean an individual who furnishes individuals to perform service in agricultural labor for any other person, pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them, and has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person; and

(d) Service performed by an individual in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or more in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages, including wages received under a contract of hire, shall be deemed to be employment unless it is shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

(a) Agricultural labor, except as provided in subdivision (4)(c) of this section, including all services performed:

(i) On a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife;

(ii) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the federal Agricultural Marketing Act, as amended, 12 U.S.C. 1141j, in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or (B) in the employ of a group of operators of

farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (A) of this subdivision, but only if such operators produced more than one-half of the commodity with respect to which such service is performed. Subdivisions (A) and (B) of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(b) Domestic service, except as provided in subdivision (4)(d) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under subdivision (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

(d) Service performed by an individual in the employ of his or her son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

(e) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the Employment Security Law shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, except that if this state is not certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code as defined in section 49-801.01, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected;

(f) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body or a member of

the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; (v) in a position which, under or pursuant to the state law, is designated a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or (vi) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

(g) For the purposes of subdivisions (4)(a) and (4)(b) of this section, service performed:

(i) In the employ of (A) a church or convention or association of churches or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of the duties required by such order;

(iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(iv) As part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(v) By an inmate of a custodial or penal institution;

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;

(i) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01, other than an organization described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01, or under section 521 thereof, if the remuneration for such service is less than fifty dollars;

(j) Service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled, regularly attending classes at, and working for such school, college, or university pursuant to a financial assistance arrangement with such school, college, or university or (ii) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that (A) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and (B) such employment will not be covered by any program of unemployment insurance;

(k) Service performed as a student nurse in the employ of a hospital or nurses training school by an individual who is enrolled and is regularly attending classes in a nurses training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(l) Service performed by an individual as a real estate salesperson, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission;

(m) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(n) Service performed by an individual in the sale, delivery, or distribution of newspapers or magazines under a written contract in which (i) the individual acknowledges that the individual performing the service and the service are not covered and (ii) the newspapers and magazines are sold by him or her at a fixed price with his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(o) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers;

(p) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(q) Service performed for a motor carrier, as defined in 49 U.S.C. 13102 or section 75-302, as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease, with the motor carrier as lessee, executed pursuant to 49 C.F.R. part 376, Title 291, Chapter 3, as amended, of the rules and regulations of the Public Service Commission, or the rules and regulations of the Division of Motor Carrier Services. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee;

(r) Service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual;

(s) Service performed by an individual as a volunteer research subject who is paid on a per study basis for scientific, medical, or drug-related testing for any organization other than one described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 or any governmental entity;

(t) Service performed by a direct seller if:

(i) Such person is engaged in sales primarily in person and is:

(A) Engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment;

(B) Engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment; or

(C) Engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(ii) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subdivision (t)(i) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee for federal and state tax purposes. Sales by a person whose business is conducted primarily by telephone or any other form of electronic sales or solicitation is not service performed by a direct seller under this subdivision;

(u) Service performed by an individual who is a participant in the National and Community Service State Grant Program, also known as AmeriCorps, because a participant is not considered an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service pursuant to 42 U.S.C. 12511(30)(B); and

(v) Service performed at a penal or custodial institution by a person committed to a penal or custodial institution;

(7) If the services performed during one-half or more of any pay period by an individual for the person employing him or her constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for the person employing him or her do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision, the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him or her. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person employing him or her when any of such service is excepted by subdivision (6)(h) of this section; and

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax

credit against the tax imposed by the Federal Unemployment Tax Act, as amended, is required to be covered under the Employment Security Law.

Source: Laws 1937, c. 108, § 2, p. 372; Laws 1939, c. 56, § 1, p. 230; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 375; C.S.Supp.,1941, § 48-702; R.S.1943, § 48-604; Laws 1945, c. 115, § 1, p. 376; Laws 1947, c. 175, § 2, p. 566; Laws 1953, c. 167, § 3, p. 523; Laws 1959, c. 228, § 1, p. 795; Laws 1961, c. 238, § 2, p. 704; Laws 1971, LB 651, § 3; Laws 1972, LB 1392, § 2; Laws 1977, LB 509, § 3; Laws 1979, LB 581, § 2; Laws 1983, LB 248, § 2; Laws 1983, LB 319, § 1; Laws 1984, LB 745, § 1; Laws 1985, LB 339, § 4; Laws 1986, LB 799, § 1; Laws 1993, LB 121, § 291; Laws 1994, LB 1337, § 3; Laws 1995, LB 424, § 1; Laws 1995, LB 574, § 52; Laws 1997, LB 79, § 1; Laws 1997, LB 129, § 1; Laws 1997, LB 130, § 1; Laws 1999, LB 168, § 2; Laws 2000, LB 953, § 1; Laws 2001, LB 387, § 1; Laws 2003, LB 199, § 2; Laws 2011, LB261, § 1.

48-606 Commissioner; duties; powers; annual report; schedule of fees.

(1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end if the same are consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding fiscal year and shall make such recommendations for amendments to such law as he or she deems proper. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Such information and recommendations submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such information by making a request for it to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

Source: Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c. 167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979, LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5; Laws 2012, LB782, § 61.

48-621 Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.

(1) The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each fund shall be maintained as a separate and distinct account in all respects, as follows:

(a) There is hereby created in the state treasury a special fund to be known as the Employment Security Administration Fund. All money credited to this fund is hereby appropriated and made available to the Commissioner of Labor. All money in this fund shall be expended solely for the purposes and in the amounts found necessary as defined by the specific federal programs, state statutes, and contract obligations for the proper and efficient administration of all programs of the Department of Labor. The fund shall consist of all money appropriated by this state and all money received from the United States of America or any agency thereof, including the Department of Labor and the Railroad Retirement Board, or from any other source for such purpose. Money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from money in such fund, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of such programs shall also be credited to this fund. All money in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund, except balances of money therein appropriated from the General Fund of this state, shall not lapse at any time but shall be continuously available to the commissioner for expenditure consistent with the Employment Security Law. Any money in the Employment Security Administration Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act; and

(b) There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money

collected under section 48-655 as interest on delinquent contributions, less refunds, shall be credited to this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner which would permit its substitution for or a corresponding reduction in federal funds which would in the absence of such money be available to finance expenditures for the administration of the unemployment insurance law, but nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such federal funds when received. The money in this fund may be used by the Commissioner of Labor only as follows:

(i) To replace within a reasonable time any money received by this state pursuant to section 302 of the federal Social Security Act, as amended, and required to be paid under section 48-622;

(ii) To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the Secretary of Labor of the United States and, for this purpose, no expenditures shall be made from this fund except on written authorization by the Governor at the request of the Commissioner of Labor; and

(iii) To be transferred to the Job Training Cash Fund.

(2)(a) Money credited to the account of this state in the Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of the Employment Security Law and public employment offices. Such money may be requisitioned pursuant to section 48-619 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of the Employment Security Law and public employment offices but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(i) The period within which such money may be obligated is limited to a period ending not more than two years after the effective date of the appropriation law; and

(ii) The amount which may be obligated is limited to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to the Employment Security Law and charged against the amounts transferred to the account of this state.

(b) For purposes of subdivision (2)(a)(ii) of this section, the amounts obligated under an appropriation for the administrative purposes described in such subdivision shall be charged against transferred amounts at the exact time the obligation is entered into.

(c) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(d) Money appropriated as provided in this subsection for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be credited to the Employment Security Administration Fund from which such payments shall be made. Money so credited shall, until expended, remain a part of the Employment Security Administration Fund and, if it will not be immediately expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(e) Notwithstanding subdivision (2)(a) of this section, money credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the Legislature.

(3) There is hereby appropriated out of the funds made available to this state in federal fiscal year 2002 under section 903(d) of the federal Social Security Act, as amended, the sum of \$6,800,484, or so much thereof as may be necessary, to be used, under the direction of the Department of Labor, for the administration of the Employment Security Law and public employment offices. The expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Reed Act distributions appropriated pursuant to this subsection may be amortized with federal grant funds provided pursuant to Title III of the federal Social Security Act and the federal Wagner-Peyser Act for the purpose of administering the state unemployment compensation and employment service programs to the extent allowed under such acts and the regulations adopted pursuant thereto. Except as specifically provided in this subsection, all provisions of subsection (2) of this section, except subdivision (2)(a)(i) of this section, shall apply to this appropriation. The commissioner shall submit an annual report to the Governor, the Speaker of the Legislature, and the chairpersons of the Appropriations Committee and the Business and Labor Committee of the Legislature describing expenditures made pursuant to this subsection. The report submitted to the committees and the Speaker of the Legislature shall be submitted electronically.

Source: Laws 1937, c. 108, § 13, p. 397; Laws 1939, c. 56, § 10, p. 248; Laws 1941, c. 94, § 10, p. 398; C.S.Supp.,1941, § 48-712; R.S. 1943, § 48-621; Laws 1947, c. 175, § 6, p. 574; Laws 1949, c. 163, § 5, p. 421; Laws 1957, c. 208, § 3, p. 729; Laws 1969, c. 584, § 50, p. 2375; Laws 1985, LB 339, § 17; Laws 1989, LB 305, § 4; Laws 1994, LB 1066, § 38; Laws 1995, LB 1, § 5; Laws 1996, LB 1072, § 3; Laws 1999, LB 608, § 2; Laws 2000, LB 953, § 6; Laws 2003, LB 197, § 1; Laws 2012, LB782, § 62; Laws 2012, LB946, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

48-622.01 State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.

(1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for payment of unemployment insurance benefits. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund through June 30, 2015, and thereafter to the Nebraska Training and Support Cash Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund through June 30, 2015, and thereafter to the Nebraska Training and Support Cash Fund.

(4) Upon certification from the commissioner that disallowed costs by the United States Department of Labor for FY2007-08, FY2008-09, and FY2009-10, or any one of them, have been reduced to an amount certain by way of settlement or final judgment, the State Treasurer shall transfer the amount of such settlement or final judgment from the State Unemployment Insurance Trust Fund to the Employment Security Special Contingent Fund. The total amount of such transfers shall not exceed \$2,816,345. The amount of the reappropriation of Federal Funds appropriated in FY2004-05 under section 903(d) of the federal Social Security Act shall be reduced by the amount transferred.

(5) Upon certification from the commissioner that the amount needed to settle pending class action litigation and terminate the contributory retirement system established pursuant to section 48-609 has been reduced to an amount certain, the State Treasurer shall transfer the amount certified by the commissioner as needed to effectuate the settlement from the State Unemployment Insurance Trust Fund to the Employment Security Special Contingent Fund. The amount transferred pursuant to this subsection shall not exceed two million seven hundred seventy-three thousand dollars.

Source: Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2; Laws 2011, LB378, § 23; Laws 2014, LB906, § 16; Laws 2014, LB997, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB906, section 16, with LB997, section 1, to reflect all amendments.

Note: Changes made by LB906 became effective March 30, 2014. Changes made by LB997 became effective July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

48-622.02 Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use; Nebraska Training and Support Cash Fund; created; use; investment; Administrative Costs Reserve Account; created; use.

(1) Until July 1, 2015:

(a) There is in the state treasury a special fund to be known as the Nebraska Training and Support Trust Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund;

(b) Money in the Nebraska Training and Support Trust Fund shall be used for (i) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (ii) administrative costs of creating, operating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (iii) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers of for-profit and not-for-profit businesses, (iv) recruitment of workers to Nebraska, (v) training new employees of expanding Nebraska businesses, (vi) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and (vii) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require; and

(c) There is within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivision (1)(b) of this section.

(2) On and after July 1, 2015:

(a) The Nebraska Training and Support Cash Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. On July 1, 2015, the State Treasurer shall transfer any money in the Nebraska Training and Support Trust Fund to the Nebraska Training and Support Cash Fund. No expenditures shall be made from the Nebraska Training and Support Cash Fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Cash Fund;

(b) Money in the Nebraska Training and Support Cash Fund shall be used for (i) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (ii) administrative costs of creating, operating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Cash Fund, (iii) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers of for-profit and not-for-profit businesses, (iv) recruitment of workers to Nebraska, (v) training new employees of expanding Nebraska businesses, (vi) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and (vii) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require; and

(c) The Administrative Costs Reserve Account is created within the Nebraska Training and Support Cash Fund. Money shall be allocated from the Nebraska Training and Support Cash Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivision (2)(b) of this section.

Source: Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3; Laws 2012, LB911, § 1; Laws 2014, LB997, § 2. Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

48-622.03 Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.

(1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

- (a) A representative of employers in Nebraska;
- (b) A representative of employees in Nebraska;
- (c) A representative of the public;
- (d) The Commissioner of Labor or a designee;
- (e) The Director of Economic Development or a designee;
- (f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

(3) Beginning July 1, 1996, through June 30, 2015, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. Beginning July 1, 2015, and annually thereafter, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Cash Fund. The

guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) Beginning September 1, 1997, through June 30, 2015, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. Beginning July 1, 2015, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Cash Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Source: Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4; Laws 2014, LB997, § 3.

Effective date July 18, 2014.

48-630 Claims; determinations by deputy.

A determination upon a claim filed pursuant to section 48-629 shall be made promptly by a representative designated by the commissioner, hereinafter referred to as a deputy, and shall include a statement as to whether and in what amount claimant is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under subdivision (5) of section 48-627, and, if so, the first day of the benefit year, his or her weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year. Any benefits to which a claimant has been found eligible shall not be withheld because of the filing of an appeal under section 48-634 and such benefits shall be paid until the appeal tribunal has rendered its decision modifying or reversing the determination allowing such benefits if the claimant is otherwise eligible. Any benefits received by any person to which, under a redetermination or decision pursuant to sections 48-630 to 48-640, he or she has been found not entitled shall be treated as erroneous payments in accordance with the provisions of section 48-665. Whenever any claim involves the application of the provisions of subdivision (4) of section 48-628, the deputy shall promptly transmit his or her full findings of fact, with respect to that subdivision, to the commissioner, who, on the basis of the evidence submitted and such additional evidence as he or she may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issue involved under the subdivision, which shall be deemed to be the decision of the deputy. All claims arising out of the same alleged labor dispute may be considered at the same time. The parties shall be promptly notified of the determination, together with the reasons therefor, and such determination shall be deemed to be the final decision on the claim, unless an appeal is filed with the appeal tribunal in the manner prescribed in section 48-634.

Source: Laws 1937, c. 108, § 6, p. 379; Laws 1941, c. 94, § 4, p. 384; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-630; Laws 1969, c.

403, § 1, p. 1399; Laws 1972, LB 1392, § 6; Laws 1985, LB 338, § 1; Laws 1995, LB 1, § 11; Laws 1995, LB 240, § 2; Laws 2012, LB1058, § 1.

48-631 Claims; redetermination; time; notice; appeal.

The deputy may reconsider a determination whenever he or she finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact, but no such redetermination shall be made after two years from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in section 48-630 with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 48-634. Subject to the same limitations and for the same reasons, the Commissioner of Labor may reconsider the determination, in any case in which the final decision has been rendered by an appeal tribunal or a court, and may apply to the tribunal or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

Source: Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-631; Laws 1961, c. 238, § 5, p. 711; Laws 2011, LB11, § 1.

48-632 Claims; determination; notice; persons entitled; employer; rights; duties.

(1) Notice of a determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to his or her last-known address. In addition, notice of any determination, together with the reasons therefor, shall be promptly given in the same manner to any employer from whom claimant received wages on or after the first day of the base period for his or her most recent claim, and who has indicated prior to the determination, in such manner as required by rule and regulation of the commissioner, that such individual may be ineligible or disqualified under any provision of the Employment Security Law. An employer shall provide information to the department in respect to the request for information within ten days after the mailing or electronic transmission of a request.

(2) If the employer provided information pursuant to subsection (7) of section 48-652 on the claim establishing the previous benefit year but did not receive a determination because of no involvement of base period wages and there are wages from that employer in the base period for the most recent claim, the employer shall be provided the opportunity to provide new information that such individual may be ineligible or disqualified under any provision of the Employment Security Law on the current claim. This subsection shall not apply

to employers who did not receive a determination because the separation was determined to result from a lack of work.

(3) On or after October 1, 2012, if an employer fails to provide information to the department within the time period specified in subsection (1) of this section, the employer shall forfeit any appeal rights otherwise available pursuant to section 48-634.

Source: Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-632; Laws 1985, LB 339, § 25; Laws 2012, LB1058, § 2.

48-633 Repealed. Laws 2012, LB 1058, § 17.

48-634 Administrative appeal; notice; time allowed; hearing; parties.

(1) The claimant or any other party entitled to notice of a determination as provided in section 48-632, may file an appeal from such determination with the department. Notice of appeal must be in writing or in accordance with rules and regulations adopted and promulgated by the commissioner and must be delivered and received within twenty days after the date of mailing of the notice of determination to his or her last-known address or, if such notice is not mailed, after the date of delivery of such notice of determination, except that for good cause shown an appeal filed outside the prescribed time period may be heard. In accordance with section 303 of the federal Social Security Act, 42 U.S.C. 503, the commissioner shall provide the opportunity for a fair hearing before an impartial appeal tribunal on each appeal.

(2) Unless the appeal is withdrawn, the appeal tribunal, after affording the parties reasonable opportunities for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination. If an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employer and to the commissioner, both of whom shall be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question. The parties shall be promptly notified of the tribunal's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

Source: Laws 1941, c. 94, § 4, p. 386; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-634; Laws 1979, LB 328, § 1; Laws 1995, LB 239, § 1; Laws 2001, LB 192, § 10; Laws 2012, LB1058, § 3.

48-636 Administrative appeals; decisions; conclusiveness.

Except insofar as reconsideration of any determination is had under sections 48-630 to 48-632, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal which has become final, shall be conclusive for all the purposes of the Employment Security Law as between the Commissioner of Labor, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in sections 48-634 to 48-644, any determination, redetermination, or decision as to rights to benefits shall be conclusive for all the

purposes of such law and shall not be subject to collateral attack by any employer.

Source: Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-636; Laws 1953, c. 167, § 7, p. 533; Laws 1985, LB 339, § 27; Laws 2012, LB1058, § 4.

48-637 Administrative appeals; decisions; effect in subsequent proceedings; certification of questions.

The final decisions of an appeal tribunal, and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the tribunal or by a court of competent jurisdiction, shall be binding upon the commissioner and any deputy in subsequent proceedings which involve similar questions of law; except that if in connection with any subsequent proceeding the commissioner or a deputy has serious doubt as to the correctness of any principle so declared he or she may certify his or her findings of fact in such case, together with the question of law involved to the appeal tribunal, which, after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceedings, shall thereupon certify to the commissioner, such deputy and such parties its answer to the question submitted. If the question thus certified to the appeal tribunal arises in connection with a claim for benefits, the tribunal in its discretion may remove to itself the entire proceedings on such claim, and, after proceeding in accordance with the requirements of sections 48-634 to 48-643 with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim.

Source: Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-637; Laws 2012, LB1058, § 5.

48-644 Benefits; payment; appeal not a supersedeas; reversal; effect.

Benefits shall be promptly paid in accordance with a determination or redetermination. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal. The commencement of a proceeding for judicial review pursuant to section 48-638 shall not operate as a supersedeas or stay. If an employer is otherwise entitled to noncharging of benefits pursuant to sections 48-630 and 48-652, and a decision allowing benefits is finally reversed, no employer's account shall be charged with benefits paid pursuant to the erroneous determination, and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

Source: Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-644; Laws 1972, LB 1392, § 7; Laws 2012, LB1058, § 6.

48-652 Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.

(1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed

interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if (i) such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.01, (D) left work from which he or she was discharged for misconduct connected with his or her work, (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01, or (F) was involuntarily separated from employment and such benefits were paid pursuant to section 48-628.05, and (ii) the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner. No benefits shall be charged to the experience account of any employer

if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5)(c)(iii) of section 48-627. No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual was participating in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (5) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no

case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

(8) If a contributory employer responds to the department's request for information within the time period set forth in subsection (1) of section 48-632 and provides accurate information as known to the employer at the time of the response, the employer's experience account shall not be charged if the individual's separation from employment is voluntary and without good cause as determined under subdivision (1) of section 48-628.

Source: Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp., 1941, § 48-707; R.S. 1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8; Laws 2010, LB1020, § 6; Laws 2012, LB1058, § 7.

48-655 Combined taxes; payments in lieu of contributions; collections; set-offs; interest; actions; setoff against federal income tax refund; procedure.

(1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action, (b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209, or (c) as provided in subsection (2)

of this section. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may recover a covered unemployment compensation debt, as defined in 26 U.S.C. 6402, by setoff against a person's federal income tax refund. Such setoff shall be made in accordance with such section and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through setoff against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or is not a covered unemployment compensation debt. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and is a covered unemployment compensation debt before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to setoff does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed setoff.

Source: Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137; Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB631, § 10; Laws 2012, LB1058, § 8.

48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; penalty; levy authorized; procedure; failure or refusal to honor levy; liability.

(1)(a) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications.

(b) In addition to any benefits which he or she may be required to repay pursuant to subdivision (1)(a) of this section, if an overpayment is established pursuant to this section on or after October 1, 2013, an individual shall be required to pay to the department a penalty equal to fifteen percent of the amount of benefits received as a result of such willful failure to disclose or falsification. All amounts collected pursuant to this subdivision shall be remitted to the State Treasurer for credit to the Unemployment Compensation Fund.

(c) An appeal may be taken from any determination made pursuant to subdivision (1)(a) of this section in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subdivision (1)(a) of this section and the penalty required under subdivision (1)(b) of this section fails or refuses to repay such overpayment and any penalty assessed within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

Source: Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11; Laws 2012, LB1058, § 9.

48-665 Benefits; erroneous payments; recovery; setoff against federal income tax refund; procedure.

(1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (a) without interest by civil action in the name of the commissioner, (b) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209, or (d) as provided in subsection (2) of this section.

(2) The commissioner may recover a covered unemployment compensation debt, as defined in 26 U.S.C. 6402, by setoff against a person's federal income tax refund. Such setoff shall be made in accordance with such section and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through setoff against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or is not a covered unemployment compensation debt. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and is a covered unemployment compensation debt before proceeding further with the offset. The amount

recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to setoff does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed setoff.

Source: Laws 1937, c. 108, § 16, p. 401; Laws 1941, c. 94, § 12, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-665; Laws 1953, c. 167, § 14(1), p. 539; Laws 1969, c. 403, § 2, p. 1400; Laws 1980, LB 798, § 1; Laws 1985, LB 339, § 46; Laws 1986, LB 950, § 8; Laws 1993, LB 46, § 15; Laws 2009, LB631, § 11; Laws 2012, LB1058, § 10.

48-665.01 Benefits; unlawful payments from foreign state or government; recovery.

Any person who has received any sum as benefits to which he or she was not entitled from any agency which administers an employment security law of another state or foreign government and who has been found liable to repay benefits received under such law may be required to repay to the commissioner for such state or foreign government the amount found due. Such amount, without interest, may be collected (1) by civil action in the name of the commissioner acting as agent for such agency, (2) by offset against any future benefits payable to the claimant under the Employment Security Law for any benefit year which may commence within three years after the claimant was notified such amount was due, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, (3) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209, or (4) as provided in subsection (2) of section 48-665.

Source: Laws 1953, c. 167, § 14(2), p. 540; Laws 1986, LB 950, § 9; Laws 1993, LB 46, § 16; Laws 2012, LB1058, § 11.

48-672 Short-time compensation program created.

Sections 48-672 to 48-683 create the short-time compensation program.

Source: Laws 2014, LB961, § 13.

Operative date October 1, 2016.

48-673 Short-time compensation program; terms, defined.

For purposes of sections 48-672 to 48-683:

(1) Affected unit means a specified plant, department, shift, or other definable unit which includes three or more employees to which an approved short-time compensation plan applies;

(2) Commissioner means the Commissioner of Labor or any delegate or subordinate responsible for approving applications for participation in a short-time compensation plan;

(3) Health and retirement benefits means employer-provided health benefits and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code, or contributions under a defined contribu-

tion plan, as defined in section 414(i) of the Internal Revenue Code, which are incidents of employment in addition to the cash remuneration earned;

(4) Short-time compensation means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the Employment Security Law;

(5) Short-time compensation plan means a plan submitted by an employer, for written approval by the commissioner, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs;

(6) Unemployment compensation means the unemployment benefits payable under the Employment Security Law other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment; and

(7) Usual weekly hours of work means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

Source: Laws 2014, LB961, § 14.

Operative date October 1, 2016.

48-674 Short-time compensation program; participation; application; form; contents.

An employer wishing to participate in the short-time compensation program shall submit a signed written short-time compensation plan to the commissioner for approval. The commissioner shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

(1) The affected unit or units covered by the plan, including the number of full-time or part-time employees in such unit, the percentage of employees in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number, and any other information required by the commissioner to identify plan participants;

(2) A description of how employees in the affected unit will be notified of the employer's participation in the short-time compensation plan if such application is approved, including how the employer will notify those employees in a collective-bargaining unit as well as any employees in the affected unit who are not in a collective-bargaining unit. If the employer will not provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice;

(3) A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation plan application may be approved which shall be not less than ten percent and not more than sixty percent. If the plan includes any week for which the

employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application;

(4)(a) Certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program.

(b) For defined benefit retirement plans, the hours that are reduced under the short-time compensation plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

(c) Notwithstanding subdivisions (4)(a) and (b) of this section, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating;

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, temporary or permanent layoffs, or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the short-time compensation plan;

(6) Certification by the employer that the short-time compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment;

(7) Agreement by the employer to: Furnish reports to the commissioner relating to the proper conduct of the plan; allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, to monitor and evaluate the plan; and follow any other directives the commissioner deems necessary for the agency to implement the plan and which are consistent with the requirements for short-time compensation plan applications;

(8) Certification by the employer that participation in the short-time compensation plan and its implementation is consistent with the employer's obligations under applicable federal and state laws;

(9) The effective date and duration of the plan that shall expire not later than the end of the twelfth full calendar month after the effective date;

(10) Certification by the employer that it has obtained the written approval of any applicable collective-bargaining unit representative and has notified all affected employees who are not in a collective-bargaining unit of the proposed short-time compensation plan;

(11) Certification by the employer that it will not hire additional part-time or full-time employees for the affected unit while the short-time compensation plan is in effect; and

(12) Any other provision added to the application by the commissioner that the United States Secretary of Labor determines to be appropriate for purposes of a short-time compensation program.

Source: Laws 2014, LB961, § 15.
Operative date October 1, 2016.

48-675 Short-time compensation program; commissioner; decision; eligibility.

(1) The commissioner shall approve or disapprove a short-time compensation plan in writing within thirty days after its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another short-time compensation plan for approval not earlier than forty-five days after the date of the disapproval.

(2)(a) A short-time compensation plan will only be approved for a contributory employer that (a) is eligible for experience rating under subdivision (4)(a) of section 48-649, (b) has a positive balance in the employer's experience account, (c) has filed all quarterly reports and other reports required under the Employment Security Law, and (d) has paid all obligation assessments, contributions, interest, and penalties due through the date of the employer's application.

(b) A short-time compensation plan will only be approved for an employer liable for making payments in lieu of contributions that has filed all quarterly reports and other reports required under the Employment Security Law and has paid all obligation assessments, payments in lieu of contributions, interest, and penalties due through the date of the employer's application.

Source: Laws 2014, LB961, § 16.
Operative date October 1, 2016.

48-676 Short-time compensation program; plan; effective date; notice of approval; expiration; revocation; termination.

(1) A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner.

(2) If a short-time compensation plan is revoked by the commissioner under section 48-677, the plan shall terminate on the date specified in the commissioner's written order of revocation.

(3) An employer may terminate a short-time compensation plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date.

(4) An employer may submit a new application to participate in another short-time compensation plan at any time after the expiration or termination date.

Source: Laws 2014, LB961, § 17.
Operative date October 1, 2016.

48-677 Short-time compensation program; plan; revocation; procedure; grounds; order.

(1) The commissioner may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

(2) The commissioner may periodically review the operation of each employer's short-time compensation plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short-time compensation plan, and violation of any criteria on which approval of the plan was based.

Source: Laws 2014, LB961, § 18.

Operative date October 1, 2016.

48-678 Short-time compensation program; plan; modification; request; decision; employer; report.

(1) An employer may request a modification of an approved plan by filing a written request with the commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the short-time compensation plan. The commissioner shall approve or disapprove the proposed modification in writing within thirty days after receipt and promptly communicate the decision to the employer.

(2) The commissioner may approve a request for modification of the plan based on conditions that have changed since the plan was approved if the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the commissioner shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

(3) An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer must report every change to the plan to the commissioner promptly and in writing. The commissioner may terminate an employer's plan if the employer fails to meet this reporting requirement. If the commissioner determines that the reported change is substantial, the commissioner shall require the employer to request a modification to the plan.

Source: Laws 2014, LB961, § 19.

Operative date October 1, 2016.

48-679 Short-time compensation program; individual; eligibility.

An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

(1) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved

prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed;

(2) Notwithstanding any other provisions of the Employment Security Law relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the commissioner such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.; and

(3) Notwithstanding any other provision of law, an individual covered by a short-time compensation plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

Source: Laws 2014, LB961, § 20.

Operative date October 1, 2016.

48-680 Short-time compensation program; weekly benefit amount; provisions applicable to individuals.

(1) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(2) An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid short-time compensation benefits for more than fifty-two weeks under a short-time compensation plan.

(3) The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of unemployment compensation established for that individual's benefit year.

(4) Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with short-time compensation provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

(5) The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan:

(a) If combined hours of work in a week for both employers does not result in a reduction of at least ten percent, or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation, of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to short-time compensation;

(b) If the combined hours of work for both employers results in a reduction equal to or greater than ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, of the usual weekly hours of work for the short-time compensation employer, the short-time

compensation payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, or more of the individual's usual weekly hours of work. A week for which benefits are paid under this subdivision shall be reported as a week of short-time compensation; and

(c) If an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his or her usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection (1) of this section.

(6) An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of unemployment compensation to which he or she would otherwise be eligible.

(7) An individual who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

Source: Laws 2014, LB961, § 21.

Operative date October 1, 2016.

48-681 Short-time compensation; charged to employer's experience account.

Short-time compensation shall be charged to the employer's experience account in the same manner as unemployment compensation is charged. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

Source: Laws 2014, LB961, § 22.

Operative date October 1, 2016.

48-682 Short-time compensation; when considered exhaustee.

An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits under section 48-628.02 and, if otherwise eligible under such section, shall be eligible to receive extended benefits.

Source: Laws 2014, LB961, § 23.

Operative date October 1, 2016.

48-683 Short-time compensation program; department; funding; report.

(1) The department shall not use General Funds to implement the short-time compensation program. The department shall use any and all available federal

funds to implement the short-time compensation program, including, but not limited to, federal funds distributed to the state under sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended.

(2) The department shall submit an annual report to the Governor and electronically to the Legislature on the short-time compensation program trends, including the number of employers filing short-time compensation program plans, the number of layoffs averted through the use of the short-time compensation program, the amount of short-time compensation program benefits paid, and other information pertinent to the short-time compensation program.

Source: Laws 2014, LB961, § 24.
Operative date October 1, 2016.

ARTICLE 8

COMMISSION OF INDUSTRIAL RELATIONS

Section

- 48-801. Terms, defined.
- 48-801.01. Act, how cited.
- 48-802. Public policy.
- 48-804. Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.
- 48-809. Commission; powers.
- 48-811. Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.
- 48-811.02. Repealed. Laws 2011, LB 397, § 35.
- 48-813. Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.
- 48-816. Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.
- 48-817. Commission; findings; decisions; orders.
- 48-818. Commission; findings; order; powers; duties; orders authorized; modification.
- 48-818.01. School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.
- 48-818.02. School district, educational service unit, or community college; total compensation; considerations.
- 48-818.03. School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.
- 48-824. Labor negotiations; prohibited practices.
- 48-838. Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.
- 48-839. Changes made by Laws 2011, LB397; applicability.

48-801 Terms, defined.

As used in the Industrial Relations Act, unless the context otherwise requires:

- (1) Certificated employee has the same meaning as in section 79-824;
- (2) Commission means the Commission of Industrial Relations;
- (3) Commissioner means a member of the commission;

(4) Governmental service means all services performed under employment by the State of Nebraska or any political or governmental subdivision thereof, including public corporations, municipalities, and public utilities;

(5) Industrial dispute includes any controversy between public employers and public employees concerning terms, tenure, or conditions of employment; the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment; or refusal to discuss terms or conditions of employment;

(6) Instructional employee means an employee of a community college who provides direct instruction to students;

(7) Labor organization means any organization of any kind or any agency or employee representation committee or plan, in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(8) Metropolitan statistical area means a metropolitan statistical area as defined by the United States Office of Management and Budget;

(9) Municipality means any city or village in Nebraska;

(10) Noncertificated and noninstructional school employee means a school district, educational service unit, or community college employee who is not a certificated or instructional employee;

(11) Public employee includes any person employed by a public employer;

(12) Public employer means the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia;

(13) Public utility includes any person or governmental entity, including any public corporation, public power district, or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof; and

(14) Supervisor means any public employee having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

Source: Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1; Laws 2011, LB397, § 1.

48-801.01 Act, how cited.

Sections 48-801 to 48-839 shall be known and may be cited as the Industrial Relations Act.

Source: Laws 1986, LB 809, § 1; Laws 1995, LB 365, § 1; Laws 1995, LB 382, § 3; Laws 2011, LB397, § 2.

48-802 Public policy.

To make operative the provisions of section 9, Article XV, of the Constitution of Nebraska, the public policy of the State of Nebraska is hereby declared to be as follows:

(1) The continuous, uninterrupted and proper functioning and operation of the governmental service including governmental service in a proprietary capacity and of public utilities engaged in the business of furnishing transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more of them, to the people of Nebraska are hereby declared to be essential to their welfare, health, and safety. It is contrary to the public policy of the state to permit any substantial impairment or suspension of the operation of governmental service, including governmental service in a proprietary capacity or any such utility by reason of industrial disputes therein. It is the duty of the State of Nebraska to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities, or catastrophes which would result therefrom. It is therefor further declared that governmental service, including governmental service in a proprietary capacity, and the service of such public utilities are clothed with a vital public interest and to protect the same it is necessary that the relations between the public employers and public employees in such industries be regulated by the State of Nebraska to the extent and in the manner provided in the Industrial Relations Act;

(2) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity of this state, either by strike, lockout, or other means; and

(3) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any public utility service, either by strike, lockout, or other means.

Source: Laws 1947, c. 178, § 2, p. 587; Laws 2011, LB397, § 3.

48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.

(1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each commissioner shall be appointed and hold office for a term of six years and until a successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be

deemed the act or decision of the commission. Three commissioners shall preside over and decide all industrial disputes where the matter at issue is the comparability of wages, benefits, and terms and conditions of employment.

(4) The commission shall not be subject to the Administrative Procedure Act.

Source: Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2; Laws 2011, LB397, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

48-809 Commission; powers.

The commission may adopt all reasonable and proper regulations to govern its proceedings, the filing of pleadings, the issuance and service of process, and the issuance of subpoenas for attendance of witnesses, may administer oaths, and may regulate the mode and manner of all its investigations, inspections, hearings, and trials. Except as otherwise provided in the Industrial Relations Act or the State Employees Collective Bargaining Act, in the taking of evidence, the rules of evidence, prevailing in the trial of civil cases in Nebraska, shall be observed by the commission.

Source: Laws 1947, c. 178, § 9, p. 590; Laws 2011, LB397, § 5.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-811 Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.

(1) Except as provided in the State Employees Collective Bargaining Act, any public employer, public employee, or labor organization, or the Attorney General of Nebraska on his or her own initiative or by order of the Governor, when any industrial dispute exists between parties as set forth in section 48-810, may file a petition with the commission invoking its jurisdiction. No adverse action by threat or harassment shall be taken against any public employee because of any petition filing by such employee, and the employment status of such employee shall not be altered in any way pending disposition of the petition by the commission except as provided in subsection (2) of this section.

(2) If a change in the employment status or in wages or terms and conditions of employment is necessary, a motion by either party or by the parties jointly may be presented to the commission at that time and if the commission finds, based on a showing of evidence at a hearing thereon, that the requested change is both reasonable and necessary to serve an important public interest and that the employer has not considered a change in the employment status, wages, or terms and conditions of employment as a policy alternative on an equal basis with other policy alternatives to achieve budgetary savings, the commission may order that the requested change be allowed pending final resolution of the pending industrial dispute.

(3) Subsection (2) of this section does not apply to public employers subject to the State Employees Collective Bargaining Act.

Source: Laws 1947, c. 178, § 11, p. 590; Laws 1969, c. 407, § 4, p. 1408; Laws 1987, LB 661, § 24; Laws 2011, LB397, § 6.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-811.02 Repealed. Laws 2011, LB 397, § 35.

48-813 Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.

(1) Whenever the jurisdiction of the commission is invoked, notice of the pendency of the proceedings shall be given in such manner as the commission shall provide for serving a copy of the petition and notice of filing upon the adverse party. A public employer or labor organization may be served by sending a copy of the petition filed to institute the proceedings and a notice of filing, which shall show the filing date, in the manner provided for service of a summons in a civil action. Such employer or labor organization shall have twenty days after receipt of the petition and notice of filing in which to serve and file its response.

(2) The petitioner shall include its final offer, as voted by the petitioner, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its petition. The respondent shall include its final offer, as voted by the respondent, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its answer. Within fourteen days after filing of the answer, the parties shall vote to accept or reject or consider pursuant to a ratification process the other's final offer and file a subsequent pleading indicating the result. The vote concerning the governing body's final offer shall be published on its agenda and held where the public may attend. The commission shall not enter a final order on wages or conditions of employment unless both parties have rejected the others' final offer. This subsection does not apply to public employers subject to the State Employees Collective Bargaining Act.

(3) When a petition is filed to resolve an industrial dispute, a hearing shall mandatorily be held within sixty days from the date of filing thereof. A recommended decision and order in cases arising under section 48-818, an order in cases not arising under section 48-818, and findings if required, shall mandatorily be made and entered thereon within thirty days after such hearing. The time requirements specified in this section may be extended for good cause shown on the record or by agreement of the parties. Failure to meet such mandatory time requirements shall not deprive the commission of jurisdiction. However, if the commission fails to hold a hearing on the industrial dispute within sixty days of filing or has failed to make a recommended decision and order, and findings of fact if required, in cases arising under section 48-818, or an order, and findings of fact if required, in cases not arising under section 48-818, and findings, within thirty days after the hearing and good cause is not shown on the record or the parties to the dispute have not jointly stipulated to the enlargement of the time limit, then either party may file an action for mandamus in the district court for Lancaster County to require the commission to hold the hearing or to render its order and findings if required. For purposes

of this section, the hearing on an industrial dispute shall not be deemed completed until the record is prepared and counsel briefs have been submitted, if such are required by the commission.

(4) Any party, including the State of Nebraska or any of its employer-representatives as defined in section 81-1371 or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any matter in the commission. The giving of such notice in such manner shall subject the public employers, the labor organizations, and the persons therein to the jurisdiction of the commission.

Source: Laws 1947, c. 178, § 13, p. 590; Laws 1972, LB 1228, § 2; Laws 1974, LB 819, § 7; Laws 1983, LB 447, § 72; Laws 1984, LB 832, § 1; Laws 1987, LB 661, § 25; Laws 2011, LB397, § 7.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-816 Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.

(1)(a) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission which shall promptly take such preliminary proceedings as may be necessary to ensure prompt hearing and speedy adjudication of the industrial dispute. The commission may, upon its own initiative or upon request of a party to the dispute, make such temporary findings and orders as necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues. In the event of an industrial dispute between a public employer and a public employee or a labor organization when such public employer and public employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume, as the case may be, and may make any such order or orders as appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any public employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Before July 1, 2012, upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. On and after July 1, 2012, upon the request of either party, a resolution officer may be appointed if the parties are within the provisions of section 48-818.01. The commission shall appoint mediators, factfinders, or before July 1, 2012, special masters and on and after such date resolution officers for such purpose. Such orders for bargaining, mediation, factfinding, or before July 1, 2012, a special master proceeding and on and after such date a resolution officer proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith means the performance of the mutual obligation of the public employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) In negotiations between a municipality, municipally owned utility, or county and a labor organization, staffing related to issues of safety shall be mandatory subjects of bargaining and staffing relating to scheduling work, such as daily staffing, staffing by rank, and overall staffing requirements, shall be permissive subjects of bargaining.

(2) Except as provided in the State Employees Collective Bargaining Act, public employers may recognize employee organizations for the purpose of negotiating collectively in the determination of and administration of grievances arising under the terms and conditions of employment of their public employees as provided in the Industrial Relations Act and may negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3)(a) Except as provided in subdivisions (b) and (c) of this subsection, a supervisor shall not be included in a single bargaining unit with any other public employee who is not a supervisor.

(b) All firefighters and police officers employed in the fire department or police department of any municipality in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single bargaining unit represented by a public employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize a public employees bargaining unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding authority subordinate only to the chief when such bargaining unit is designated or elected by public employees in the unit.

(c) All administrators employed by a Class V school district shall be presumed to have a community of interest and may join a single bargaining unit composed otherwise of teachers and other certificated employees for purposes of the Industrial Relations Act, except that the following administrators shall be exempt: The superintendent, associate superintendent, assistant superintendent, secretary and assistant secretary of the board of education, executive director, administrators in charge of the offices of state and federal relations and research, chief negotiator, and administrators in the immediate office of the superintendent. A Class V school district shall recognize a public employees bargaining unit composed of teachers and other certificated employees and administrators, except the exempt administrators, when such bargaining unit is formed by the public employees as provided in section 48-838 and may recognize such a bargaining unit as provided in subsection (2) of this section. In addition, all administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.

(4) When a public employee organization has been certified as an exclusive collective-bargaining agent or recognized pursuant to any other provisions of the Industrial Relations Act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such public employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in such act and to negotiate and enter into written agreements with such public employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by a public employer of a request from a labor organization to bargain on behalf of public employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the public employer as the exclusive bargaining representative for the public employees in that bargaining unit.

(6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission may (a) make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) make available to public employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and public employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) establish, after consulting representatives of public employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, before July 1, 2012, special masters and on and after such date resolution officers, or members of factfinding boards.

(7)(a) Except for those cases arising under section 48-818, the commission shall make findings of facts in all cases in which one of the parties to the dispute requests findings. Such request shall be specific as to the issues on which the party wishes the commission to make findings of fact.

(b) In cases arising under section 48-818, findings of fact shall not be required of the commission unless both parties to the dispute stipulate to the request and to the specific issues on which findings of fact are to be made.

(c) If findings of fact are requested under subdivision (a) or (b) of this subsection, the commission may require the parties making the request to submit proposed findings of fact to the commission on the issues on which findings of facts are requested.

(d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within twenty-five days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of receipt of such request and shall issue an order within ten days after holding such posttrial conference, which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

Source: Laws 1947, c. 178, § 16, p. 591; Laws 1967, c. 303, § 2, p. 825; Laws 1969, c. 407, § 5, p. 1408; Laws 1972, LB 1402, § 1; Laws 1972, LB 1228, § 3; Laws 1979, LB 444, § 5; Laws 1984, LB 832, § 2; Laws 1985, LB 213, § 2; Laws 1986, LB 809, § 5; Laws 1987, LB 524, § 2; Laws 1987, LB 661, § 26; Laws 1988, LB 519, § 1; Laws 1988, LB 684, § 1; Laws 1988, LB 942, § 1; Laws 1995, LB 365, § 2; Laws 2011, LB397, § 8.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-817 Commission; findings; decisions; orders.

After the hearing and any investigation, the commission shall make all findings, findings of fact, recommended decisions and orders, and decisions and orders in writing, which findings, findings of fact, recommended decisions and orders, and decisions and orders shall be entered of record. Except as provided in the State Employees Collective Bargaining Act, the final decision and order or orders shall be in effect from and after the date therein fixed by the commission, but no such order or orders shall be retroactive except as provided otherwise in the Industrial Relations Act. Except as provided otherwise in the Industrial Relations Act, in the making of any findings or orders in connection with any such industrial dispute, the commission shall give no consideration to any evidence or information which it may obtain through an investigation or otherwise receive, except matters of which the district court might take judicial notice, unless such evidence or information is presented and made a part of the record in a hearing and opportunity is given, after reasonable notice to all parties to the controversy of the initiation of any investigation and the specific contents of the evidence or information obtained or received, to rebut such evidence or information either by cross-examination or testimony.

Source: Laws 1947, c. 178, § 17, p. 592; Laws 1979, LB 444, § 7; Laws 1984, LB 832, § 3; Laws 1987, LB 661, § 27; Laws 2011, LB397, § 9.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-818 Commission; findings; order; powers; duties; orders authorized; modification.

(1) Except as provided in the State Employees Collective Bargaining Act, the findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the commission shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In establishing wage rates the commission shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees. Any order or orders entered may be modified on the commission's own motion or on application by any of the parties affected, but only upon a showing of a change in the conditions from those prevailing at the time the original order was entered.

(2) For purposes of industrial disputes involving public employers other than school districts, educational service units, and community colleges with their certificated and instructional employees and public employers subject to the State Employees Collective Bargaining Act:

(a) Job matches shall be sufficient for comparison if (i) evidence supports at least a seventy percent match based on a composite of the duties and time spent performing those duties and (ii) at least three job matches per classification are available for comparison. If three job matches are not available, the commission shall base its order on the historic relationship of wages paid to such position over the last three fiscal years, for which data is available, as compared to wages paid to a position for which a minimum of three job matches are available;

(b) The commission shall adhere to the following criteria when establishing an array:

(i) Geographically proximate public employers and Nebraska public employers are preferable for comparison;

(ii) The preferred size of an array is seven to nine members. As few as five members may be chosen if all array members are Nebraska employers. The commission shall include members mutually agreed to by the parties in the array;

(iii) If more than nine employers with job matches are available, the commission shall limit the array to nine members, based upon selecting array members with the highest number of job matches at the highest job match percentage;

(iv) Nothing in this subdivision (2)(b) of this section shall prevent parties from stipulating to an array member that does not otherwise meet the criteria in such subdivision, and nothing in such subdivision shall prevent parties from stipulating to less than seven or more than nine array members;

(v) The commission shall not require a balanced number of larger or smaller employers or a balanced number of Nebraska or out-of-state employers;

(vi) If the array includes a public employer in a metropolitan statistical area other than the metropolitan statistical area in which the employer before the commission is located, only one public employer from such metropolitan statistical area may be included in the array;

(vii) Arrays for public utilities with annual revenue of five hundred million dollars or more shall include both comparable public and privately owned utilities. Arrays for public utilities with annual revenue of less than five hundred million dollars may include both comparable public and privately owned utilities. Public utilities that produce radioactive material and energy pursuant to section 70-627.02 shall have at least four members in its array that produce radioactive material and energy when employees directly involved in this production are included in the bargaining unit. For public utilities that generate, transmit, and distribute power, the array shall include members that also perform these functions. For a public utility serving a city of the primary class, the array shall only include public power districts in Nebraska that generate, transmit, and distribute power and any out-of-state utilities whose number of meters served is not more than double or less than one-half of the number of meters served by the public utility serving a city of the primary class unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(viii) In constructing an array for a public utility, the commission shall use fifty-mile concentric circles until it reaches the optimum array pursuant to subdivision (2)(b)(ii) of this section; and

(ix) For a statewide public utility that provides service to a majority of the counties in Nebraska, any Nebraska public or private job match may be used without regard to the population or full-time equivalent employment requirements of this section, and any out-of-state job match may be used if the full-time equivalent employment of the out-of-state employer is no more than double and no less than one-half of the full-time equivalent employment of the bargaining unit of the statewide public utility in question;

(c) In determining same or similar working conditions, the commission shall adhere to the following:

(i) Public employers in Nebraska shall be presumed to provide same or similar working conditions unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(ii) Public employers shall be presumed to provide the same or similar working conditions if (A) for public employers that are counties or municipalities, the population of such public employer is not more than double or less than one-half of the population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, (B) for public employers that are public utilities, the number of such public employer's employees is not more than double or less than one-half of the number of employees of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, or (C) for public employers that are school districts, educational service units, or community colleges with noncertificated and noninstructional school employees, the student enrollment of such public employer is not more than double or less than one-half of the student enrollment of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(iii)(A) Public employers located within a metropolitan statistical area who meet the population requirements of subdivision (2)(c)(ii)(A) of this section, if the public employer is a county or municipality, or the student enrollment requirements of subdivision (2)(c)(ii)(C) of this section, if the public employer is a school district or an educational service unit, shall be presumed to provide the same or similar working conditions if the metropolitan statistical area population in which they are located is not more than double or less than one-half the metropolitan statistical area population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar.

(B) The presumption created by subdivision (2)(c)(iii)(A) of this section may be overcome in situations where evidence establishes that there are substantial similarities which cause the work or conditions of employment to be similar, allowing the commission to consider public employers located within a metropolitan statistical area even if the metropolitan statistical area population in which that employer or employers are located is more than double or less than one-half the metropolitan statistical area population of the public employer before the commission. The burden of establishing sufficient similarity is on the party seeking to include a public employer pursuant to this subdivision (2)(c)(iii)(B) of this section; and

(iv) Public employers other than public utilities which are not located within a metropolitan statistical area shall not be compared to public employers located in a metropolitan statistical area. For purposes of this subdivision, metropolitan statistical area includes municipalities with populations of fifty thousand inhabitants or more;

(d) Prevalent shall be determined as follows: (i) For numeric values, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median. For fringe benefits, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median as long as a majority of the array members provide the benefit; and (ii) for nonnumeric comparisons, prevalent shall be the mode that the majority of the array members provide if the compared-to benefit is similar in nature. If there is no clear mode, the benefit or working condition shall remain unaltered by the commission;

(e) For any out-of-state employer, the parties may present economic variable evidence and the commission shall determine what, if any, adjustment is to be made if such evidence is presented. The commission shall not require that any such economic variable evidence be shown to directly impact the wages or benefits paid to employees by such out-of-state employer;

(f) In determining total or overall compensation, the commission shall value every economic item even if the year in question has expired. The commission shall require that all wage and benefit levels be leveled over the twelve-month period in dispute to account for increases or decreases which occur in the wage or benefit levels provided by any array member during such twelve-month period;

(g) In cases filed pursuant to this subsection (2) of this section, the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than those adopted by rule pursuant to section 48-809. The commission shall receive evidence relating to array selection, job match, and wages and benefits which have been assembled by telephone, electronic transmission, or mail delivery, and any such

evidence shall be accompanied by an affidavit from the employer or any other person with personal knowledge which affidavit shall demonstrate the affiant's personal knowledge and competency to testify on the matters thereon. The commission, with the consent of the parties to the dispute, and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer as long as the individual in question has personal knowledge about the information being sought. The commission may rely upon information gained in such inquiry for its decision. Opinion testimony shall be received by the commission based upon evidence provided in accordance with this subdivision. Testimony concerning job match shall be received if job match inquiries were conducted by telephone, electronic transmission, or mail delivery if the witness providing such testimony verifies the method of such job match inquiry and analysis;

(h) In determining the value of defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall use an hourly rate value calculation as follows:

(i) Once the array has been chosen, each array member and the public employer of the subject bargaining unit shall provide a copy of its most recent defined benefit pension actuarial valuation report. Each array member and the public employer of the subject bargaining unit shall provide the most recent copy of its health insurance plans or health benefit plans, covering the preceding twelve-month period, with associated employer and employee costs, to the parties and the commission. Each array member shall also provide information concerning premium equivalent payments and contributions for health savings accounts. Each array member and the public employer of the subject bargaining unit shall indicate which plans are most used. The plans that are most used shall be used for comparison;

(ii) Once the actuarial valuation reports are received, the parties shall have thirty calendar days to determine whether to have the pensions actuarially valued at an hourly rate value other than equal. The hourly rate value for defined benefit plans shall be presumed to be equal to that of the array selected unless one or both of the parties presents evidence establishing that the actuarially derived annual normal cost of the pension benefit for each job classification in the subject bargaining unit is above or below the midpoint of the average normal cost. Consistent methods and assumptions are to be applied to determine the annual normal cost of any defined benefit pension plan of the subject bargaining unit and each array member. For this purpose, the entry age normal actuarial cost method is recommended. The actuarial assumptions that are selected for this purpose should reflect expectations for a defined benefit pension plan maintained for the employees of the subject bargaining unit and acknowledge the eligibility and benefit provisions for each respective defined benefit pension plan. In this regard, different eligibility and benefit provisions may suggest different retirement or termination of employment assumptions. The methods and assumptions shall be attested to by an actuary holding a current membership with the American Academy of Actuaries. Any party who requests or presents evidence regarding actuarial valuation of a defined benefit plan shall be responsible for costs associated with such valuation and testimony. The actuarial valuation is presumed valid, unless a party presents competent actuarial evidence that the valuation is invalid;

(iii) The hourly rate value for defined contribution plans shall be established upon comparison of employer contributions;

(iv) The hourly rate value for health insurance plans or health benefit plans shall be established based upon the public employer's premium payments, premium equivalent payments, and public employer and public employee contributions to health savings accounts;

(v) The commission shall not compare defined benefit plans to defined contribution plans or defined contribution plans to defined benefit plans; and

(vi) The commission shall order increases or decreases in wage rates by job classification based upon the hourly rate value for health-related benefits, benefits provided for retirement plans, and wages;

(i) For benefits other than defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall issue an order based upon a determination of prevalency as determined under subdivision (2)(d) of this section; and

(j) The commission shall issue an order regarding increases or decreases in base wage rates or benefits as follows:

(i) The order shall be retroactive with respect to increases and decreases to the beginning of the bargaining year in dispute;

(ii) The commission shall determine whether the hourly rate value of the bargaining unit's members or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the hourly rate value falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the hourly rate value is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the hourly rate value is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the hourly rate value is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the hourly rate value is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this subdivision (2)(j) of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis;

(iii) The parties shall have twenty-five calendar days to negotiate modifications to wages and benefits. If no agreement is reached, the commission's order shall be followed as issued; and

(iv) The commission shall provide an offset to the public employer when a lump-sum payment is due because benefits were paid in excess of the prevalent

as determined under subdivision (2)(d) of this section or when benefits were paid below the prevalent as so determined but wages were above prevalent.

Source: Laws 1947, c. 178, § 18, p. 592; Laws 1969, c. 407, § 6, p. 1410; Laws 1987, LB 661, § 28; Laws 2011, LB397, § 10.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-818.01 School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.

(1) The Legislature finds that it is in the public's interest that collective bargaining involving school districts, educational service units, and community colleges and their certificated and instructional employees commence and conclude in a timely fashion consistent with school district budgeting and financing requirements. To that end, the timelines in this section shall apply when the public employer is a school district, educational service unit, or community college.

(2) On or before September 1 of the year preceding the contract year in question, the certificated and instructional employees' collective-bargaining agent shall request recognition as bargaining agent. The governing board shall respond to such request not later than the following October 1. A request for recognition need not be filed if the certificated and instructional employees' bargaining agent has been certified by the commission as the exclusive collective-bargaining agent. On or before November 1 of the year preceding the contract year in question, negotiations shall begin. There shall be no fewer than four negotiations meetings between the certificated and instructional employees' collective-bargaining agent and the governing board's bargaining agent. Either party may seek a bargaining order pursuant to subsection (1) of section 48-816 at any stage in the negotiations. If an agreement is not reached on or before the following February 8, the parties shall submit to mandatory mediation or factfinding as ordered by the commission pursuant to sections 48-811 and 48-816 unless the parties mutually agree in writing to forgo mandatory mediation or factfinding.

(3)(a) The mediator or factfinder as ordered by the commission under subsection (2) of this section shall be a resolution officer. The commission shall provide the parties with the names of five individuals qualified to serve as the resolution officer. If the parties cannot agree on an individual, each party shall alternately strike names. The remaining individual shall serve as the resolution officer.

(b) The resolution officer may:

- (i) Determine whether the issues are ready for adjudication;
- (ii) Identify for resolution terms and conditions of employment that are in dispute and which were negotiated in good faith but upon which no agreement was reached;
- (iii) Accept stipulations;
- (iv) Schedule hearings;
- (v) Prescribe rules of conduct for conferences;

- (vi) Order additional mediation if necessary;
- (vii) Take any other action which may aid in resolution of the industrial dispute; and
- (viii) Consult with a party ex parte only with the concurrence of all parties.

(c) The resolution officer shall choose the most reasonable final offer on each issue in dispute. In making such choice, he or she shall consider factors relevant to collective bargaining between public employers and public employees, including comparable rates of pay and conditions of employment as described in subsection (1) of section 48-818. The resolution officer shall not apply strict rules of evidence. Persons who are not attorneys may present cases to the resolution officer.

(d) If either party to a resolution officer proceeding is dissatisfied with the resolution officer's decision, such party shall have the right to file an action with the commission seeking a determination of terms and conditions of employment pursuant to subsection (1) of section 48-818. Such action shall not constitute an appeal of the resolution officer's decision, but rather shall be heard by the commission as an action brought pursuant to subsection (1) of section 48-818. The commission shall resolve, pursuant to the mandates of such section, all of the issues identified by either party and which were recognized by the resolution officer as an industrial dispute. If parties have not filed with the commission pursuant to subsection (6) of this section, the decision of the resolution officer shall be deemed final and binding.

(4) For purposes of this section, issue means broad subjects of negotiation which are presented to the resolution officer pursuant to this section. All aspects of wages are a single issue, all aspects of insurance are a single issue, and all other subjects of negotiations classified in broad categories are single issues.

(5) On or before March 25 of the year preceding the contract year in question or within twenty-five days after the certification of the amounts to be distributed to each local system and each school district pursuant to the Tax Equity and Educational Opportunities Support Act as provided in section 79-1022 for the contract year in question, whichever occurs last in time, negotiations, mediation, and factfinding shall end.

(6) If an agreement for the contract year in question has not been achieved on or before the date for negotiation, mediation, or factfinding to end in subsection (5) of this section, either party may, within fourteen days after such date, file a petition with the commission pursuant to section 48-811 and subsection (1) of section 48-818 to resolve the industrial dispute for the contract year in question. The commission shall render a decision on such industrial dispute on or before September 15 of the contract year in question.

(7) Any existing collective-bargaining agreement will continue in full force and effect until superseded by further agreement of the parties or by an order of the commission. The parties may continue to negotiate unresolved issues by mutual agreement while the matter is pending with the commission.

(8) All collective-bargaining agreements shall be written and executed by representatives of the governing board and representatives of the certificated and instructional employees' bargaining unit. The agreement shall contain at a minimum the following:

- (a) A salary schedule or objective method of determining salaries;

(b) A description of benefits being provided or agreed upon including a specific level of coverage provided in any group insurance plan, a dollar amount, or percentage of premiums to be paid, and by whom; and

(c) A provision that the existing agreement will continue until replaced by a successor agreement or as amended by a final order of the commission.

Source: Laws 2011, LB397, § 11.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

48-818.02 School district, educational service unit, or community college; total compensation; considerations.

When determining total compensation pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall consider the employer's contribution to retirement plans and health insurance premiums, premium equivalent payments, or cash equivalent payments and any other costs, including Federal Insurance Contributions Act contributions, associated with providing such benefits.

Source: Laws 2011, LB397, § 12.

48-818.03 School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.

When establishing wage rates pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall determine whether the total compensation of the members of the bargaining unit or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the total compensation falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the total compensation is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the total compensation is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the total compensation is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the total compensation is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis.

Source: Laws 2011, LB397, § 13.

48-824 Labor negotiations; prohibited practices.

(1) It is a prohibited practice for any public employer, public employee, public employee organization, or collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.

(2) It is a prohibited practice for any public employer or the public employer's negotiator to:

(a) Interfere with, restrain, or coerce employees in the exercise of rights granted by the Industrial Relations Act;

(b) Dominate or interfere in the administration of any public employee organization;

(c) Encourage or discourage membership in any public employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or because the public employee has formed, joined, or chosen to be represented by any public employee organization;

(e) Refuse to negotiate collectively with representatives of collective-bargaining agents as required by the Industrial Relations Act;

(f) Deny the rights accompanying certification or recognition granted by the Industrial Relations Act; and

(g) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(3) It is a prohibited practice for any public employee, public employee organization, or bargaining unit or for any representative or collective-bargaining agent to:

(a) Interfere with, restrain, coerce, or harass any public employee with respect to any of the public employee's rights granted by the Industrial Relations Act;

(b) Interfere with, restrain, or coerce a public employer with respect to rights granted by the Industrial Relations Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

(c) Refuse to bargain collectively with a public employer as required by the Industrial Relations Act; and

(d) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(4) The expressing of any view, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, is not evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act if such expression contains no threat of reprisal or force or promise of benefit.

Source: Laws 1995, LB 382, § 1; Laws 2011, LB397, § 14.

48-838 Collective bargaining; questions of representation; elections; non-member employee duty to reimburse; when.

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of public employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for public employees, except that in no event shall a contract between a public employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent public employees, nor shall any contract bar for more than three years a petition by public employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the public employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the public employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of public employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs

incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any public employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting public employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

Source: Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7; Laws 2011, LB397, § 15.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

48-839 Changes made by Laws 2011, LB397; applicability.

Changes made to the Industrial Relations Act by Laws 2011, LB397 shall apply to petitions filed with the commission on or after October 1, 2011, except for petitions filed involving school districts, educational service units, and community colleges with their certificated and instructional employees for which such changes shall apply on or after July 1, 2012.

Source: Laws 2011, LB397, § 16.

ARTICLE 11

NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

Section

48-1117. Commission; powers; duties; enumerated.

48-1117 Commission; powers; duties; enumerated.

The commission shall have the following powers and duties:

(1) To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state;

(2) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, and take the testimony of any person under oath and, in connection therewith, to require the production for examination of any books and papers relevant to any allegation of unlawful employment practice pending before the commission. The commission may make rules as to the issuance of subpoenas, subject to the approval by a constitutional majority of the elected members of the Legislature;

(3) To cooperate with the federal government and with local agencies to effectuate the purposes of the Nebraska Fair Employment Practice Act, including the sharing of information possessed by the commission on a case that has also been filed with the federal government or local agencies if both the employer and complainant have been notified of the filing;

(4) To attempt to eliminate unfair employment practices by means of conference, mediation, conciliation, arbitration, and persuasion;

(5) To require that every employer, employment agency, and labor organization subject to the act shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are

being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may either apply to the commission for an exemption from the application of such regulation or order or bring a civil action in the district court for the district where such records are kept. If the commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the commission or the court, as the case may be, may grant appropriate relief;

(6) To report, not less than once every two years, to the Clerk of the Legislature and the Governor, on the hearings it has conducted and the decisions it has rendered, the other work performed by it to carry out the purposes of the act, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, marital status, or national origin, as may be desirable. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the report required by this subdivision by making a request for it to the chairperson of the commission; and

(7) To adopt and promulgate rules and regulations necessary to carry out the duties prescribed in the act.

Source: Laws 1965, c. 276, § 17, p. 790; Laws 1973, LB 266, § 11; Laws 1977, LB 161, § 11; Laws 1979, LB 322, § 18; Laws 1981, LB 545, § 11; Laws 1984, LB 14A, § 3; Laws 1993, LB 124, § 3; Laws 1993, LB 360, § 15; Laws 2012, LB782, § 63.

ARTICLE 12

WAGES

(c) WAGE PAYMENT AND COLLECTION

Section

48-1228. Act, how cited.

48-1229. Terms, defined.

48-1230. Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.

48-1231. Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.

48-1233. Commissioner of Labor; enforcement powers.

Section

48-1234. Commissioner of Labor; citation; notice of penalty; employer contest; hearing.

(c) WAGE PAYMENT AND COLLECTION

48-1228 Act, how cited.

Sections 48-1228 to 48-1234 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

Source: Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1; Laws 2014, LB560, § 1.

Effective date July 18, 2014.

48-1229 Terms, defined.

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(2) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(3) Federally insured financial institution means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States Government;

(4) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs;

(5) Payroll debit card means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. Payroll debit card includes payroll debit cards, payroll cards, and pycards; and

(6) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a

time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

Source: Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2; Laws 2014, LB765, § 1.

Operative date January 1, 2015.

48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has a written agreement with the employee to deduct, withhold, or divert.

(2) On each regular payday, the employer shall deliver or make available to each employee, by mail or electronically, or shall provide at the employee's normal place of employment during employment hours for all shifts a wage statement showing, at a minimum, the identity of the employer, the hours for which the employee was paid, the wages earned by the employee, and deductions made for the employee. However, the employer need not provide information on hours worked for employees who are exempt from overtime under the federal Fair Labor Standards Act of 1938, under 29 C.F.R. part 541, unless the employer has established a policy or practice of paying to or on behalf of exempt employees overtime, or bonus or a payment based on hours worked, whereupon the employer shall send or otherwise provide a statement to the exempt employees showing the hours the employee worked or the payments made to the employee by the employer, as applicable.

(3) When an employer elects to pay wages with a payroll debit card, the employer shall comply with the compulsory-use requirements prescribed in 15 U.S.C. 1693k. Additionally, the employer shall allow an employee at least one means of fund access withdrawal per pay period, but not more frequently than once per week, at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement. An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages with a payroll debit card.

(4) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

Source: Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3; Laws 2010, LB884, § 2; Laws 2014, LB560, § 4; Laws 2014, LB765, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB560, section 4, with LB765, section 2, to reflect all amendments.

Note: Changes made by LB560 became effective July 18, 2014. Changes made by LB765 became operative January 1, 2015.

48-1231 Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.

(1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and secures judgment on the claim, such employee shall be entitled to recover (a) the full amount of the judgment and all costs of such suit and (b) if such employee has employed an attorney in the case, an amount for attorney's fees assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and the plaintiff recovers a judgment, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court, which fees shall not be less than twenty-five percent of the unpaid wages. If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this section. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) An employer who fails to furnish a wage statement under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

Source: Laws 1977, LB 220A, § 4; Laws 1991, LB 311, § 2; Laws 2010, LB884, § 3; Laws 2014, LB560, § 5.
Effective date July 18, 2014.

48-1233 Commissioner of Labor; enforcement powers.

The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of the Nebraska Wage Payment and

Collection Act. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the act when the information sought is relevant to a lawful investigative purpose and is reasonable in scope.

Source: Laws 2014, LB560, § 2.
Effective date July 18, 2014.

48-1234 Commissioner of Labor; citation; notice of penalty; employer contest; hearing.

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Wage Payment and Collection Act, other than a violation of subsection (2) of section 48-1230.

(2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

Source: Laws 2014, LB560, § 3.
Effective date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 14

DEFERRED COMPENSATION

Section

48-1401. Political subdivisions; exception; deferred compensation plan; provisions; investment; payment for civil damages; conditions.

48-1401 Political subdivisions; exception; deferred compensation plan; provisions; investment; payment for civil damages; conditions.

(1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any individual's compensation derived from such county, municipality, or other political subdivision, instrumentality, or agency to a future period in time pursuant to section 457 of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials.

(2) The compensation to be deferred may never exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan.

(4) The county, municipality, or other political subdivision, instrumentality, or agency shall designate its treasurer or an equivalent official, including the State Treasurer, to be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the compensation to be deferred under an agreement in or with: (a) Annuities; (b) mutual funds; (c) banks; (d) savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; (f) an organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska; or (g) investment advisers as defined in the federal Investment Advisers Act of 1940.

(6) The deferred compensation program shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(7) Any compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(8) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(9) The state, county, municipality, or other political subdivision, instrumentality, or agency shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(10)(a) Except as provided in subdivision (b) of this subsection, all compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(b) If a participant in the deferred compensation plan is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the participant's compensation deferred under the plan, property and rights purchased with the deferred compensation, or investment income attributable to the deferred compensation, property, or rights from the plan, the court may order the payment of such compensation, property and rights, or investment income for such civil damages, except that the compensation, property and rights, or investment income to the extent reasonably necessary for the support of the participant or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of compensation, property and rights, or investment income shall not be stayed on the filing of any appeal of the

conviction. If the conviction is reversed on final judgment, all compensation, property and rights, or investment income paid as civil damages shall be forfeited and returned to the participant. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(12) If a county has not established a deferred compensation plan pursuant to this section, each individual may require that the county enter into an agreement with the individual to defer a portion of such individual's compensation and place it under the management and supervision of the state deferred compensation plan created pursuant to sections 84-1504 to 84-1506. If such an agreement is made, the county shall designate the State Treasurer as custodian of such deferred compensation funds and such deferred compensation funds shall become a part of the trust administered by the Public Employees Retirement Board pursuant to sections 84-1504 to 84-1506.

(13) For purposes of this section, individual means (a) any person designated by the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, as a permanent part-time or full-time employee of the county, municipality, or other political subdivision, instrumentality, or agency and (b) a person under contract providing services to the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered into a contract with such county, municipality, political subdivision, instrumentality, or agency to have compensation deferred prior to August 28, 1999.

Source: Laws 1977, LB 328, § 1; Laws 1997, LB 623, § 11; Laws 1999, LB 703, § 8; Laws 2012, LB916, § 18.

ARTICLE 16

NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

Section

- 48-1617. Purpose of act.
 48-1623. Nebraska Workforce Investment Board; members.
 48-1624. State board; duties.
 48-1625. State board; state plan; duties.

(b) NEBRASKA WORKFORCE INVESTMENT ACT

48-1617 Purpose of act.

(1) The purpose of the Nebraska Workforce Investment Act is to provide workforce investment activities through statewide and local workforce investment systems that will improve the quality of the workforce and enhance the productivity and competitiveness of Nebraska through its workforce, including health care workers.

(2) The Legislature recognizes the following principles:

(a) Nebraskans must upgrade their skills to succeed in today's workplace;

(b) In business, workforce skills are the key competitive advantage;

(c) Workforce skills will be Nebraska's primary job-creating incentive for business;

(d) Efficiency and accountability mandate the consolidation of program services and the elimination of unwarranted duplication;

(e) Streamlined state and local partnerships must focus on outcomes, not process;

(f) Locally designed, customer-focused, market-driven service delivery which offers a single point of entry for all services is vital; and

(g) Job training services must be developed in concert with the input and needs of existing employers and businesses, and must consider anticipated demand for targeted job opportunities.

In recognition of these principles, the Nebraska Workforce Investment Act will coordinate state and local activities to increase employment, retention, occupational skills, and earnings in the workforce. The act will enhance the productivity and competitiveness of state business and industry and encourage continuous improvement in worker preparation beginning with youth in middle school through adulthood.

(3) Nebraska's workforce development plan must implicate a comprehensive, consumer-driven, employment and career development system that meets the needs of all members of the workforce, including those entering the workforce for the first time, those in employment transition, and those currently employed but seeking to enhance their skills for continued career advancement.

Source: Laws 2001, LB 193, § 2; Laws 2011, LB502, § 1.

48-1623 Nebraska Workforce Investment Board; members.

(1) The Nebraska Workforce Investment Board is established to assist in the development of a state plan to carry out the functions described in the federal Workforce Investment Act.

(2) The state board shall include:

(a) The Governor;

(b) Two members of the Legislature selected by and serving at the pleasure of the Speaker of the Legislature; and

(c) Members appointed by the Governor who serve at the pleasure of the Governor who are:

(i) Representatives of business in the state who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards described in subdivision (2)(a)(i) of section 48-1620;

(B) Represent businesses with employment opportunities that reflect the employment opportunities of the state; and

(C) Are appointed from among individuals nominated by state business organizations and business trade associations;

(ii) A representative of health care employers of the state who conducts statewide health workforce planning and training;

(iii) Chief elected officials representing both cities and counties;

(iv) Representatives of labor organizations who have been nominated by state labor federations;

(v) Representatives of individuals and organizations that have experience with respect to youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854;

(vi) Representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the state;

(vii)(A) The officials from each of the lead state agencies with responsibility for the programs and activities that are described in section 48-1619 and carried out by one-stop partners; and

(B) In any case in which no lead state agency official has responsibility for such a program, service, or activity, a representative in the state with expertise relating to such program, service, or activity; and

(viii) Such other representatives and state agency officials as the Governor may designate.

(3) The two members of the Legislature serving on the state board shall be nonvoting, ex officio members. All other members shall be voting members. The Governor may designate a representative to participate on his or her behalf in state board committee and general meetings. Such representative shall be entitled to vote on matters brought before the board and shall be considered a member of the board for purposes of determining if a quorum is present.

(4) Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse regions of the state, including urban, rural, and suburban areas.

(5) A majority of the voting members of the state board shall be private sector representatives described in subdivision (2)(c)(i) of this section. The Governor shall select a chairperson and a vice-chairperson for the state board from among the representatives described in such subdivision.

(6) To transact business at all meetings of the state board, a quorum of voting members must be present. A majority of the voting members shall constitute a quorum of the Nebraska Workforce Investment Board.

Source: Laws 2001, LB 193, § 8; Laws 2003, LB 194, § 1; Laws 2008, LB210, § 1; Laws 2011, LB502, § 2.

48-1624 State board; duties.

The state board shall advise the Governor in:

(1) The development of the state plan;

(2) The development and continuous improvement of a statewide system of services that are funded under the federal Workforce Investment Act carried out through a one-stop delivery system described in section 134(c) of the federal act, 29 U.S.C. 2864(c), that receives funds under the statewide workforce investment system, including:

(a) The development of linkages in order to assure coordination and non duplication among the programs and activities described in section 48-1619; and

(b) The review of local plans;

(3) Commenting at least once annually on the measures taken pursuant to section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. 2323(b), as such section existed on March 2, 2001. Such comments shall be included in the annual report provided for in subsection (2) of section 48-1625;

(4) The designation of local areas as required in section 116 of the federal Workforce Investment Act, 29 U.S.C. 2831;

(5) The development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 128(b)(3)(B) and 133(b)(3)(B) of the federal Workforce Investment Act, 29 U.S.C. 2853(b)(3)(B) and 29 U.S.C. 2863(b)(3)(B);

(6) The development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state as required under section 136(b) of the federal Workforce Investment Act, 29 U.S.C. 2871(b);

(7) The preparation of the annual report to the Secretary of Labor described in section 136(d) of the federal Workforce Investment Act, 29 U.S.C. 2871(d);

(8) The development of the statewide employment statistics system described in section 15(e) of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as the section existed on March 2, 2001;

(9) The development of an application for an incentive grant under section 503 of the federal Workforce Investment Act, 20 U.S.C. 9273; and

(10) The development of a plan which has a component to reduce the current and projected shortage of health care workers in the state.

Source: Laws 2001, LB 193, § 9; Laws 2011, LB502, § 3.

48-1625 State board; state plan; duties.

(1) The state board shall submit to the Governor recommendations for changes in the state plan submitted to the Secretary of Labor outlining the five-year strategy for the statewide workforce investment system for the State of Nebraska in accordance with section 112 of the federal Workforce Investment Act of 1998, 29 U.S.C. 2822.

(2) The state board shall submit to the chairperson and members of the Business and Labor Committee of the Legislature, the chairperson of each of the standing committees of the Legislature, the Speaker of the Legislature, the Clerk of the Legislature, the Department of Health and Human Services, the Department of Economic Development, the State Department of Education, and the Department of Labor a copy of any recommendations for modification of the state plan and the annual report of the state board. The recommendations and report submitted to the committees, the Speaker of the Legislature, and the Clerk of the Legislature shall be submitted electronically. The annual report of the state board shall include information on the number of individuals served, the state's average cost per individual receiving training or placement services, short-term and long-term performance measures of job placements,

and training and skill levels of training participants. In order to promote better accountability, such reports shall contain measures of accomplishment of the performance measures set forth at 20 C.F.R. 666.100, as the regulation existed on March 2, 2001, and shall use consistent units of measure in order to provide comparability both within a single annual report and between different annual reports.

Source: Laws 2001, LB 193, § 10; Laws 2012, LB782, § 64.

ARTICLE 22

NON-ENGLISH-SPEAKING EMPLOYEES

Section

48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.

48-2213 Meatpacking industry worker rights coordinator; established; powers and duties.

(1) The position of meatpacking industry worker rights coordinator is established within the department. The coordinator shall be appointed by the Governor.

(2) The duties of the coordinator shall be to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights, which rights are outlined as follows:

- (a) The right to organize;
- (b) The right to a safe workplace;
- (c) The right to adequate facilities and the opportunity to use them;
- (d) The right to complete information;
- (e) The right to understand the information provided;
- (f) The right to existing state and federal benefits and rights;
- (g) The right to be free from discrimination;
- (h) The right to continuing training, including training of supervisors;
- (i) The right to compensation for work performed; and
- (j) The right to seek state help.

(3) The coordinator and his or her designated representatives shall have access to all meatpacking operations in the State of Nebraska at any time meatpacking products are being processed and industry workers are on the job.

(4) Necessary office space, furniture, equipment, and supplies as well as necessary assistance for the coordinator shall be provided by the commissioner.

(5) Preference shall be given to applicants for the coordinator position who are fluent in the Spanish language.

(6) The coordinator shall, on or before December 1 of each year, submit a report to the members of the Legislature and the Governor regarding any recommended actions the coordinator deems necessary or appropriate to provide for the fair treatment of workers in the meatpacking industry. The

report submitted to the members of the Legislature shall be submitted electronically.

Source: Laws 2000, LB 1363, § 4; R.S.Supp.,2002, § 81-404; Laws 2003, LB 418, § 7; Laws 2012, LB782, § 65.

ARTICLE 23

NEW HIRE REPORTING ACT

Section

48-2302. Terms, defined.

48-2307. Department; report.

48-2302 Terms, defined.

For purposes of the New Hire Reporting Act:

(1) Date of hire means the day an employee begins employment with an employer;

(2) Department means the Department of Health and Human Services;

(3) Employee means an independent contractor or a person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated;

(4) Employer means any individual, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of the state or federal government, labor organization, or any other entity with an employee;

(5) Income means compensation paid, payable, due, or to be due for labor or personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise;

(6) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government; and

(7) Rehire means the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as an unpaid medical leave, an unpaid leave of absence, a temporary layoff of less than sixty days in length, or an absence for disability or maternity.

Source: Laws 1997, LB 752, § 41; Laws 2009, LB288, § 16; Laws 2012, LB1058, § 12.

48-2307 Department; report.

The department shall issue electronically a report to the Legislature on or before January 31 of each year which discloses the number of employees reported to the department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221; Laws 2012, LB782, § 66.

ARTICLE 29

EMPLOYEE CLASSIFICATION ACT

Section

48-2909. Report; contents.

48-2909 Report; contents.

The department shall provide electronically an annual report to the Legislature regarding compliance with and enforcement of the Employee Classification Act. The report shall include, but not be limited to, the number of reports received from both its hotline and web site, the number of investigated reports, the findings of the reports, the amount of combined tax, interest, and fines collected, the number of referrals to the Department of Revenue, Nebraska Workers' Compensation Court, and appropriate prosecuting authority, and the outcome of such referrals.

Source: Laws 2010, LB563, § 9; Laws 2012, LB782, § 67.

ARTICLE 31

SUBSIDIZED EMPLOYMENT PILOT PROGRAM

Section

48-3101. Legislative findings.

48-3102. Terms, defined.

48-3103. Subsidized Employment Pilot Program; created; Department of Health and Human Services; duties; Department of Labor; powers; nonprofit organization; duties; report; contents.

48-3104. Subsidies.

48-3105. Nonprofit organization; gather and report performance measures.

48-3106. Termination.

48-3107. Rules and regulations.

48-3108. Appropriations; legislative intent; use.

48-3101 Legislative findings.

The Legislature finds that:

(1) Work experience is necessary to obtain employment in a competitive job market;

(2) Businesses find creating capacity to add employees during a time of economic recovery challenging;

(3) Subsidized employment can benefit employers and workers in need of experience;

(4) Increasing opportunities for public assistance recipients to engage in meaningful workplace experience can significantly contribute to their long-term employability;

(5) Providing subsidized employment can also help businesses to grow; and

(6) States nationwide provide subsidized employment to public assistance recipients in order to aid employers in developing work placements for public assistance recipients.

Source: Laws 2013, LB368, § 1.

48-3102 Terms, defined.

For purposes of sections 48-3101 to 48-3107:

(1) Aid to dependent children program means the program described in section 43-512; and

(2) Participant means an individual who qualifies for the aid to dependent children program services with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline.

Source: Laws 2013, LB368, § 2.

48-3103 Subsidized Employment Pilot Program; created; Department of Health and Human Services; duties; Department of Labor; powers; nonprofit organization; duties; report; contents.

(1) The Subsidized Employment Pilot Program is created within the Department of Health and Human Services to provide opportunities for employers and participants in the aid to dependent children program to achieve subsidized employment.

(2) The department shall establish a partnership between an entity which contracts with the department pursuant to section 68-1722 to provide case management services in the aid to dependent children program and a nonprofit organization.

(3) The Department of Labor may establish a partnership with the nonprofit organization described in subsection (2) of this section to assist in the referral of participants and employers for the pilot program.

(4) The nonprofit organization described in subsection (2) of this section shall:

(a) Establish an application process for employers to participate in the pilot program. Such application process shall include, but not be limited to, a requirement that employer applicants submit a plan including, but not limited to, the following criteria:

(i) Initial client assessment, job development, job placement, and employment retention services;

(ii) A strategy to place participants in in-demand jobs; and

(iii) Other program guidelines or criteria for the pilot program as needed;

(b) Recruit participants for the pilot program, with assistance from the Department of Health and Human Services, the Department of Labor, and an entity which contracts with the department pursuant to section 68-1722 to provide case management services in the aid to dependent children program;

(c) Recruit employers for the pilot program, with assistance from the Department of Labor;

(d) Determine participant eligibility for the pilot program and assist with employer and employee matching;

(e) Ensure that the pilot program operates in both rural and urban areas. To ensure that the pilot program operates in both rural and urban areas, such nonprofit organization may enter into subcontracts with other nonprofit entities;

(f) Gather the data and performance measures as described in section 48-3105; and

(g) Submit an electronic report on or before September 15 of each year to the Health and Human Services Committee of the Legislature containing the data and performance measures described in section 48-3105.

Source: Laws 2013, LB368, § 3.

48-3104 Subsidies.

Subsidies under the Subsidized Employment Pilot Program created pursuant to section 48-3103 shall be capped at the prevailing wage and shall be provided for no more than forty hours per week for not more than six months, on the following scale:

- (1) One hundred percent in months one and two;
- (2) Seventy-five percent in month three;
- (3) Fifty percent in months four and five; and
- (4) Twenty-five percent in month six.

Source: Laws 2013, LB368, § 4.

48-3105 Nonprofit organization; gather and report performance measures.

The nonprofit organization described in subsection (2) of section 48-3103 shall ensure the gathering and reporting of the following performance measures:

- (1) Number of employees participating in the Subsidized Employment Pilot Program;
- (2) Length of time each employee has participated in the program;
- (3) Wages paid to employees in the program;
- (4) Employment status of each employee at completion of his or her participation in the program, six months after such completion, and twelve months after such completion;
- (5) Wages of each employee at completion of his or her participation in the program, six months after such completion, and twelve months after such completion;
- (6) Number of employers participating in the program; and
- (7) Length of time each employer has participated in the program.

Source: Laws 2013, LB368, § 5.

48-3106 Termination.

The Subsidized Employment Pilot Program created under section 48-3103 terminates on July 1, 2018.

Source: Laws 2013, LB368, § 6.

48-3107 Rules and regulations.

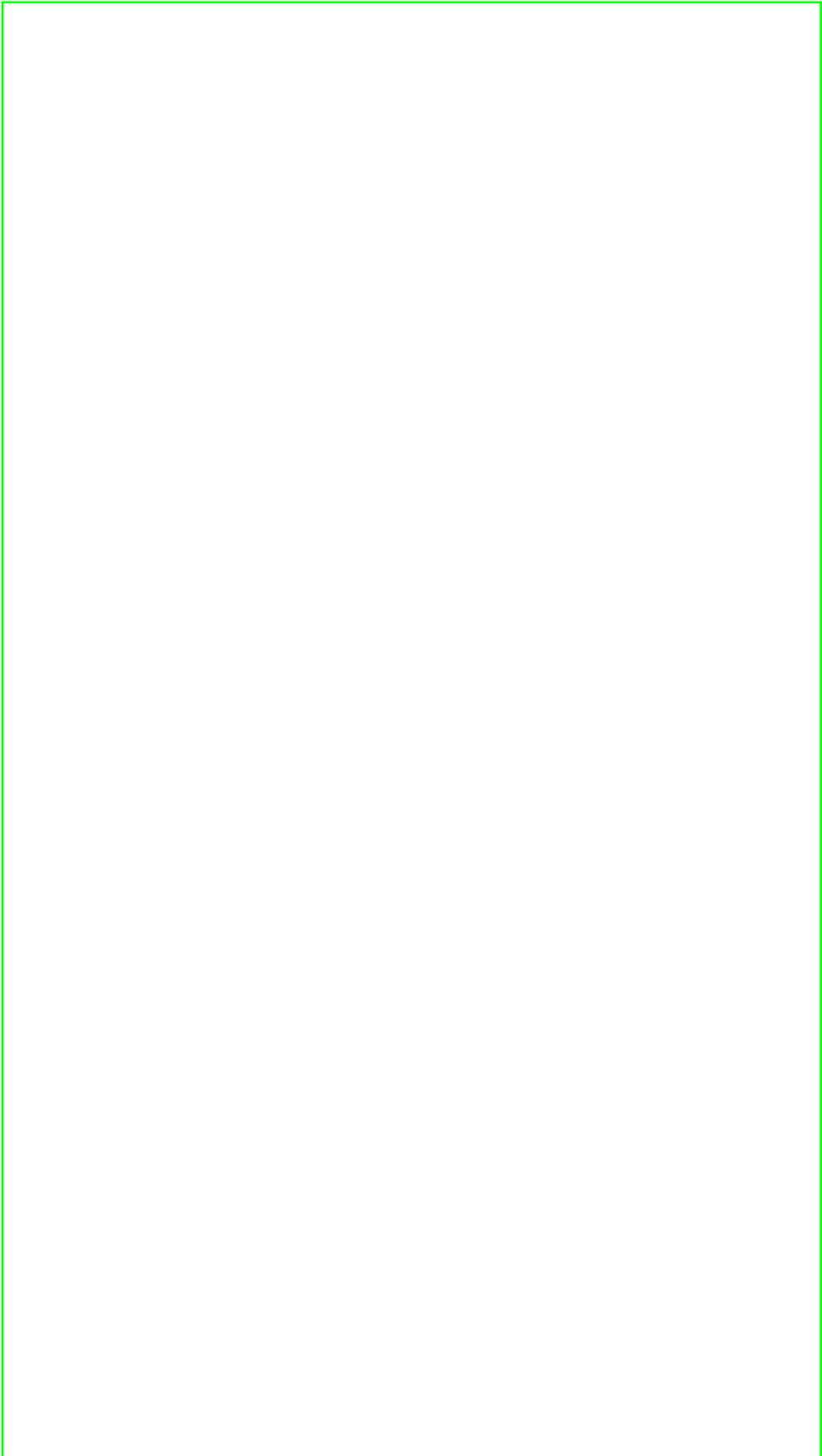
The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out sections 48-3101 to 48-3106.

Source: Laws 2013, LB368, § 7.

48-3108 Appropriations; legislative intent; use.

It is the intent of the Legislature to appropriate one million dollars each fiscal year for FY2014-15 to FY2017-18 from funds available to the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., as such sections existed on January 1, 2013, to carry out sections 48-3101 to 48-3106. No more than ten percent of the funds appropriated to carry out sections 48-3101 to 48-3106 shall be used for administrative costs. Administrative cost shall not be defined to include cost for service delivery. Any of such funds which are unexpended on June 30, 2018, shall lapse to the federal Temporary Assistance for Needy Families program on such date.

Source: Laws 2013, LB368, § 8.



CHAPTER 49

LAW

Article.

6. Printing and Distribution of Statutes. 49-617.
7. Statute Revision. 49-707 to 49-770.
8. Definitions, Construction, and Citation. 49-801.01.
9. Commission on Uniform State Laws. 49-904.
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 - (a) General Provisions. 49-1413 to 49-1433.01.
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 - (d) Conflicts of Interest. 49-14,102.
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 - (f) Digital and Electronic Filing. 49-14,141.
15. Nebraska Short Form Act. Repealed.

ARTICLE 6

PRINTING AND DISTRIBUTION OF STATUTES

Section

49-617. Printing of statutes; distribution of copies.

49-617 Printing of statutes; distribution of copies.

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; three copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, the Auditor of Public Accounts, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of

Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Nebraska Public Employees Retirement Systems, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

Source: Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 325, § 1, p. 863; Laws 1967, c. 326, § 1, p. 865; Laws 1971, LB 36, § 4; Laws 1972, LB 1032, § 254; Laws 1972, LB 1174, § 1; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 563, § 4; Laws 1973, LB 572, § 1; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8; Laws 2010, LB770, § 3; Laws 2011, LB384, § 1.

ARTICLE 7
STATUTE REVISION

Section

- 49-707. Copyright; distribution; price; disposition of proceeds; receipts.
49-708. Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund; created; use; investment.
49-770. Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.

49-707 Copyright; distribution; price; disposition of proceeds; receipts.

The Revisor of Statutes shall cause the supplements and reissued volumes to be copyrighted under the copyright laws of the United States for the benefit of the people of Nebraska.

The supplements and reissued or replacement volumes shall be sold and distributed by the Supreme Court at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall be sufficient to recover all costs of publication and distribution.

The Supreme Court may sell for one dollar per volume any compilation or revision of the statutes of Nebraska that has been superseded by a later official revision, compilation, or replacement volume. The Supreme Court may dispose of any unsold superseded volumes in any manner it deems proper.

All money received by the Supreme Court from the sale of the supplements and reissued or replacement volumes shall be paid into the state treasury to the credit of the Nebraska Statutes Cash Fund or the Nebraska Statutes Distribution Cash Fund, as appropriate. That portion of the money received that represents the costs of publication shall be credited to the Nebraska Statutes Cash Fund, and that portion of the money received that represents the costs of distribution shall be credited to the Nebraska Statutes Distribution Cash Fund. The court shall take receipts for all such money paid into the funds.

Supplements and reissued volumes shall be furnished and delivered free of charge in the same number and to the same parties as are designated in section 49-617.

Source: Laws 1945, c. 119, § 7, p. 394; Laws 1965, c. 306, § 5, p. 862; Laws 1965, c. 305, § 2, p. 860; Laws 1977, LB 8, § 3; Laws 1980, LB 598, § 3; Laws 1986, LB 991, § 1; Laws 1987, LB 572, § 7; Laws 2012, LB576, § 1.

49-708 Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund; created; use; investment.

The Nebraska Statutes Cash Fund is created. The fund shall consist of funds received pursuant to section 49-707. The fund shall be used by the Revisor of Statutes to perform the duties required by subdivision (4) of section 49-702 and section 49-704, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Statutes Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The Nebraska Statutes Distribution Cash Fund is created. The fund shall consist of funds received pursuant to section 49-707. The fund shall be used by the Supreme Court to perform the duties required by such section. Any money

in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2012, LB576, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

49-770 Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.

When one section of the statutes is amended in two or more bills in the same session of the Legislature and has not been correlated as a part of the normal legislative process and the amendments are not entirely reconcilable and are in conflict with each other, it shall be the duty of the Revisor of Statutes to cause only the latest version to pass the Legislature to be published in the statutory supplement followed by a brief note explaining the action taken. The Revisor of Statutes shall report electronically each such case to the chairperson of the appropriate standing committee at or prior to the convening of the next regular session of the Legislature for whatever action may be appropriate.

Source: Laws 1979, LB 70, § 2; Laws 2012, LB782, § 68.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Section

49-801.01. Internal Revenue Code; reference.

49-801.01 Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902, 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on April 11, 2014.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2; Laws 2011, LB134, § 1; Laws 2011, LB389, § 11; Laws 2012, LB725, § 1; Laws 2012, LB1128, § 20; Laws 2013, LB24, § 1; Laws 2014, LB191, § 13; Laws 2014, LB739, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB191, section 13, with LB739, section 1, to reflect all amendments.

Note: Changes made by LB739 became effective April 11, 2014. Changes made by LB191 became effective July 18, 2014.

ARTICLE 9

COMMISSION ON UNIFORM STATE LAWS

Section

49-904. Members; duties.

49-904 Members; duties.

Each commissioner shall attend the meeting of the National Conference of Commissioners on Uniform State Laws, and both in and out of such national conference shall do all in his or her power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable. The commission shall report electronically to the Clerk of the Legislature from time to time as the commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the commission. It shall also be the duty of the commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

Source: Laws 1951, c. 166, § 4, p. 650; Laws 1979, LB 322, § 20; Laws 1981, LB 545, § 12; Laws 2012, LB782, § 69.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

Section

49-1413. Committee, defined.

49-1415. Contribution, defined.

49-1433.01. Major out-of-state contributor, defined.

(b) CAMPAIGN PRACTICES

49-1445. Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.

49-1446. Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.

49-1446.04. Candidate committee; loans; restrictions; civil penalty.

49-1447. Committee treasurer; statements or reports; duties; committee records; violation; penalty.

49-1455. Committee campaign statement; contents.

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(a) GENERAL PROVISIONS

49-1413 Committee, defined.

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of more than five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or (b) a person whose primary purpose is to receive contributions or make expenditures and who receives or makes contributions or expenditures of more than five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

(2) Except as otherwise provided in section 49-1445, a committee shall be considered formed and subject to the Nebraska Political Accountability and Disclosure Act upon raising, receiving, or spending more than five thousand dollars in a calendar year as prescribed in this section.

(3) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership is not a committee if it makes expenditures or provides personal services pursuant to sections 49-1469 to 49-1469.08.

Source: Laws 1976, LB 987, § 13; Laws 1980, LB 535, § 3; Laws 1983, LB 230, § 1; Laws 1987, LB 480, § 2; Laws 1999, LB 416, § 2; Laws 2005, LB 242, § 4; Laws 2013, LB79, § 2; Laws 2014, LB946, § 21.

Operative date January 1, 2015.

49-1415 Contribution, defined.

(1) Contribution shall mean a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

(2) Contribution shall include the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fundraising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; and the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.

(3) Contribution shall not include:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than two hundred fifty dollars in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid;

(b) Amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution; or

(c) Food and beverages, in the amount of not more than fifty dollars in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

Source: Laws 1976, LB 987, § 15; Laws 2013, LB79, § 3; Laws 2014, LB946, § 22.

Operative date January 1, 2015.

49-1433.01 Major out-of-state contributor, defined.

Major out-of-state contributor means a corporation, union, industry association, trade association, or professional association which is not organized under the laws of the State of Nebraska and which makes contributions or expendi-

tures totaling more than ten thousand dollars in any calendar year in connection with one or more elections.

Source: Laws 1997, LB 49, § 6; Laws 2013, LB79, § 4; Laws 2014, LB946, § 23.

Operative date January 1, 2015.

(b) CAMPAIGN PRACTICES

49-1445 Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.

(1) A candidate shall form a candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year.

(2) A candidate committee may consist of one member with the candidate being the member.

(3) A person who is a candidate for more than one office shall form a candidate committee for an office upon raising, receiving, or expending more than five thousand dollars in a calendar year for that office.

(4) Two or more candidates who campaign as a slate or team for public office shall form a committee upon raising, receiving, or expending jointly in any combination more than five thousand dollars in a calendar year.

(5) The fee to file for office shall not be included in determining if a candidate has raised, received, or expended more than five thousand dollars in a calendar year.

(6) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 45; Laws 1980, LB 535, § 5; Laws 1983, LB 230, § 2; Laws 1987, LB 480, § 3; Laws 1990, LB 601, § 1; Laws 1999, LB 416, § 3; Laws 2005, LB 242, § 7; Laws 2013, LB79, § 5; Laws 2014, LB946, § 24.

Operative date January 1, 2015.

49-1446 Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.

(1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469.06, including independent expenditures made in such elections.

(8) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 46; Laws 1977, LB 41, § 40; Laws 1980, LB 535, § 6; Laws 1988, LB 1136, § 1; Laws 1993, LB 587, § 12; Laws 2005, LB 242, § 8; Laws 2013, LB79, § 6.

49-1446.04 Candidate committee; loans; restrictions; civil penalty.

(1) A candidate committee shall not accept more than fifteen thousand dollars in loans prior to or during the first thirty days after formation of the candidate committee.

(2) After the thirty-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee shall not accept loans in an aggregate amount of more than fifty percent of the contributions of money, other than the proceeds of loans, which the candidate committee has received during such period as of the date of the receipt of the proceeds of the loan. Any loans which have been repaid as of such date shall not be taken into account for purposes of the aggregate loan limit.

(3) A candidate committee shall not pay interest, fees, gratuities, or other sums in consideration of a loan, advance, or other extension of credit to the candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

(4) The penalty for violation of this section shall be a civil penalty of not less than two hundred fifty dollars and not more than the amount of money received by a candidate committee in violation of this section if the candidate committee received more than two hundred fifty dollars. The commission shall assess and collect the civil penalty and shall remit the penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1995, LB 399, § 2; Laws 2005, LB 242, § 12; Laws 2006, LB 188, § 13; Laws 2013, LB79, § 7.

49-1447 Committee treasurer; statements or reports; duties; committee records; violation; penalty.

(1) The committee treasurer shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in a statement or report filed pursuant to sections 49-1445 to 49-1479.02 or rules and regulations adopted and promulgated under the Nebraska Political Accountability and Disclosure Act.

(2)(a) For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee required to be filed under the act and shall be personally liable subject to section 49-1461.01 for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings.

(b) For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed by his or her candidate committee under the Nebraska Political Accountability and Disclosure Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

(3) The committee treasurer shall record the name and address of each person from whom a contribution is received except for contributions of fifty dollars or less received pursuant to subsection (2) of section 49-1472.

(4) The records of a committee shall be preserved for five years and shall be made available for inspection as authorized by the commission.

(5) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 47; Laws 1977, LB 41, § 41; Laws 2000, LB 438, § 2; Laws 2005, LB 242, § 13; Laws 2013, LB79, § 8.

49-1455 Committee campaign statement; contents.

(1) The campaign statement of a committee, other than a political party committee, shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(d) The full name of each individual from whom contributions totaling more than two hundred fifty dollars are received during the period covered by the report, together with the individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that individual for the election period;

(e) The full name of each person, except those individuals reported under subdivision (1)(d) of this section, which contributed a total of more than two hundred fifty dollars during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(f) The name of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(g) Except as otherwise provided in subsection (3) of this section: The full name and street address of each person to whom expenditures totaling more than two hundred fifty dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(h) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(i) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

(2) For purposes of this section, election period means the calendar year of the election.

(3) A campaign statement shall include the total amount paid to individual petition circulators during the reporting period, if any, but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

Source: Laws 1976, LB 987, § 55; Laws 1988, LB 1136, § 3; Laws 1993, LB 587, § 13; Laws 1997, LB 420, § 18; Laws 1999, LB 416, § 7; Laws 2008, LB39, § 6; Laws 2013, LB79, § 9; Laws 2014, LB946, § 25.

Operative date January 1, 2015.

49-1456 Committee account; income; how treated; loans.

(1) Any income received by a committee on an account consisting of funds or property belonging to the committee shall not be considered a contribution to the committee but shall be reported as income. Any interest paid by a committee shall be reported as an expenditure.

(2) A loan made or received shall be set forth in a separate schedule providing the date and amount of the loan and, if the loan is repaid, the date

and manner of repayment. The committee shall provide the name and address of the lender and any person who is liable directly, indirectly, or contingently on each loan of more than two hundred fifty dollars.

Source: Laws 1976, LB 987, § 56; Laws 1981, LB 134, § 3; Laws 1999, LB 416, § 8; Laws 2013, LB79, § 10; Laws 2014, LB946, § 26.
Operative date January 1, 2015.

49-1457 Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.

(1) The campaign statement filed by a political party committee shall contain the following information:

(a) The full name and street address of each person from whom contributions totaling more than two hundred fifty dollars in value are received in a calendar year, the amount, and the date or dates contributed; and if the person is a committee, the name and address of the committee and the full name and street address of the committee treasurer, together with the amount of the contribution and the date received;

(b) An itemized list of all expenditures, including in-kind contributions and expenditures and loans, made during the period covered by the campaign statement which were contributions to a candidate committee of a candidate for elective office or a ballot question committee; or independent expenditures in support of the qualification, passage, or defeat of a ballot question, or in support of the nomination or election of a candidate for elective office or the defeat of any of the candidate's opponents;

(c) The total expenditure by the committee for each candidate for elective office or ballot question in whose behalf an independent expenditure was made or a contribution was given for the election; and

(d) The filer's name, address, and telephone number, if any, and the full name, residential and business addresses, and telephone numbers of the committee treasurer.

(2) A contribution to a candidate or ballot question committee listed under subdivision (1)(b) of this section shall note the name and address of the committee, the name of the candidate and the office sought, if any, the amount contributed, and the date of the contribution.

(3) An independent expenditure listed under subdivision (1)(b) of this section shall note the name of the candidate for whose benefit the expenditure was made and the office sought by the candidate, or a brief description of the ballot question for which the expenditure was made, the amount, date, and purpose of the expenditure, and the full name and address of the person to whom the expenditure was made.

(4) An expenditure listed which was made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.

Source: Laws 1976, LB 987, § 57; Laws 1999, LB 416, § 9; Laws 2013, LB79, § 11; Laws 2014, LB946, § 27.
Operative date January 1, 2015.

49-1459 Campaign statements; filing schedule; statement of exemption.

(1) Except as provided in subsection (2) of this section, campaign statements as required by the Nebraska Political Accountability and Disclosure Act shall be filed according to the following schedule:

(a) A first preelection campaign statement shall be filed not later than the thirtieth day before the election. The closing date for a campaign statement filed under this subdivision shall be the thirty-fifth day before the election;

(b) A second preelection campaign statement shall be filed not later than the tenth day before the election. The closing date for a campaign statement filed under this subdivision shall be the fifteenth day before the election; and

(c) A postelection campaign statement shall be filed not later than the fortieth day following the primary election and the seventieth day following the general election. The closing date for a postelection campaign statement to be filed under this subdivision after the primary election shall be the thirty-fifth day following the election. The closing date for a postelection campaign statement to be filed under this subdivision after the general election shall be December 31 of the year in which the election is held. If all liabilities of a candidate and committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the dates provided under this subdivision.

(2) Any committee may file a statement with the commission indicating that the committee does not expect to receive contributions or make expenditures of more than one thousand dollars in the calendar year of an election. Such statement shall be signed by the committee treasurer or the assistant treasurer, and in the case of a candidate committee, it shall also be signed by the candidate. Such statement shall be filed on or before the thirtieth day before the election. A committee which files a statement pursuant to this subsection is not required to file campaign statements according to the schedule prescribed in subsection (1) of this section but shall file a sworn statement of exemption not later than the fortieth day following the primary election and the seventieth day following the general election stating only that the committee did not, in fact, receive or expend an amount in excess of one thousand dollars. If the committee receives contributions or makes expenditures of more than one thousand dollars during the election year, the committee is then subject to all campaign filing requirements under subsection (1) of this section.

Source: Laws 1976, LB 987, § 59; Laws 1980, LB 535, § 10; Laws 1993, LB 587, § 14; Laws 1998, LB 632, § 3; Laws 1999, LB 416, § 11; Laws 2013, LB79, § 12.

49-1461.01 Ballot question committee; surety bond; requirements; violations; penalty.

(1) A ballot question committee shall file with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

(2) A bond in the amount of five thousand dollars shall be filed with the commission within thirty days after the committee receives contributions or makes expenditures of more than one hundred thousand dollars in a calendar year, and the amount of the bond shall be increased by five thousand dollars for

each additional five hundred thousand dollars received or expended in a calendar year.

(3) Proof of any required increase in the amount of the bond shall be filed with the commission within thirty days after each additional five hundred thousand dollars is received or expended. Any failure to pay late filing fees, civil penalties, or interest due under the act shall be recovered from the proceeds of the bond prior to recovery from the treasurer of the committee.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 2000, LB 438, § 3; Laws 2005, LB 242, § 16; Laws 2013, LB79, § 13; Laws 2014, LB946, § 28.
Operative date January 1, 2015.

49-1463 Campaign statement; statement of exemption; violations; late filing fee.

(1) Any person who fails to file a campaign statement with the commission under sections 49-1459 to 49-1463 shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(2) Any committee which fails to file a statement of exemption with the commission under subsection (2) of section 49-1459 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement of exemption remains not filed in violation of this section, not to exceed two hundred twenty-five dollars.

Source: Laws 1976, LB 987, § 63; Laws 1980, LB 535, § 13; Laws 1998, LB 632, § 4; Laws 1999, LB 416, § 12; Laws 2006, LB 188, § 14; Laws 2013, LB79, § 14.

49-1463.01 Late filing fee; relief; reduction or waiver; when.

(1) A person required to pay a late filing fee imposed under section 49-1449, 49-1458, 49-1463, 49-1467, 49-1469.08, 49-1478.01, or 49-1479.01 may apply to the commission for relief. The commission by order may reduce the amount of a late filing fee imposed and waive any or all of the interest due on the fee upon a showing by such person that (a) the circumstances indicate no intent to file late, (b) the person has not been required to pay late filing fees for two years prior to the time the filing was due, (c) the late filing shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fees and waiver of interest would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(2) A person required to pay a late filing fee imposed for failure to file a statement of exemption under subsection (2) of section 49-1459 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and waive any or all of the interest due on the fee, and the person shall not be required to make a showing as provided by subsection (1) of this section.

Source: Laws 1987, LB 480, § 7; Laws 1996, LB 1263, § 2; Laws 1997, LB 420, § 19; Laws 1998, LB 632, § 5; Laws 2000, LB 438, § 7;

Laws 2001, LB 242, § 4; Laws 2005, LB 242, § 17; Laws 2006, LB 188, § 15; Laws 2013, LB79, § 15; Laws 2014, LB946, § 29.
Operative date January 1, 2015.

49-1464 Campaign statements of committees; where filed.

The campaign statement of any committee, including a candidate committee, a ballot question committee, or a political party committee, shall be filed with the commission.

Source: Laws 1976, LB 987, § 64; Laws 1980, LB 535, § 14; Laws 1993, LB 587, § 16; Laws 2001, LB 242, § 5; Laws 2013, LB79, § 16.

49-1467 Person; independent expenditure report; when filed; contents; late filing fee; violation; penalty.

(1) Any person, other than a committee, who makes an independent expenditure advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which is in an amount of more than two hundred fifty dollars, shall file a report of the independent expenditure, within ten days, with the commission.

(2) The report shall be made on an independent expenditure report form provided by the commission and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount of the expenditure, the name and address of the person to whom it was paid, the name and address of the person filing the report, and the name, address, occupation, employer, and principal place of business of each person who contributed more than two hundred fifty dollars to the expenditure.

(3) Any person who fails to file a report of an independent expenditure with the commission shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(4) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 67; Laws 1977, LB 41, § 42; Laws 1996, LB 1263, § 3; Laws 1999, LB 416, § 13; Laws 2001, LB 242, § 6; Laws 2005, LB 242, § 18; Laws 2013, LB79, § 17; Laws 2014, LB946, § 30.

Operative date January 1, 2015.

49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.

(1) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, which is organized under the laws of the State of Nebraska or doing business in this state and which is not a committee, may:

- (a) Make an expenditure;
- (b) Make a contribution; and
- (c) Provide personal services.

(2) Any such entity shall not be required to file reports of independent expenditures pursuant to section 49-1467, but if it makes a contribution or

expenditure, or provides personal services, with a value of more than two hundred fifty dollars, it shall file a report with the commission within ten days after the end of the calendar month in which the contribution or expenditure is made or the personal services are provided. The report shall include:

(a) The nature, date, and value of the contribution or expenditure and the name of the candidate or committee or a description of the ballot question to or for which the contribution or expenditure was made; and

(b) A description of any personal services provided, the date the services were provided, and the name of the candidate or committee or a description of the ballot question to or for which the personal services were provided.

(3) Any entity specified in subsection (1) of this section may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in sections 49-1469.05 and 49-1469.06.

Source: Laws 1976, LB 987, § 69; Laws 1977, LB 41, § 43; Laws 1980, LB 535, § 15; Laws 1983, LB 214, § 1; Laws 1988, LB 1136, § 4; Laws 1993, LB 587, § 17; Laws 1996, LB 1263, § 4; Laws 1999, LB 416, § 14; Laws 2005, LB 242, § 19; Laws 2013, LB79, § 18; Laws 2014, LB946, § 31.

Operative date January 1, 2015.

49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.

(1) An entity specified in subsection (1) of section 49-1469 which establishes and administers a separate segregated political fund:

(a) Shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund; and

(b) Shall file the reports required by subsection (2) of section 49-1469 with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund.

(2) If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association, limited liability company, or limited liability partnership of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (2) of section 49-1469.

Source: Laws 2005, LB 242, § 20; Laws 2013, LB79, § 19.

49-1469.06 Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.

(1) All contributions to and expenditures from a separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stockholders, or members of the corporation, including a nonprofit corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, and the affiliates thereof, under which such fund was established.

(2) No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals.

(3) Only expenditures to candidates and committees and independent expenditures may be made from a fund established by an entity specified in subsection (1) of section 49-1469. Such separate segregated political fund may receive and disburse funds for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the entity which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made.

(4) The expenses for establishment and administration of a separate segregated political fund of any such entity may be paid from the separate segregated political fund of such entity.

Source: Laws 2005, LB 242, § 21; Laws 2013, LB79, § 20.

49-1469.07 Businesses and organizations; separate segregated political fund; status.

A separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to independent committees, and the entity which establishes and administers such fund shall make the reports and filings required therefor.

Source: Laws 2005, LB 242, § 22; Laws 2013, LB79, § 21.

49-1469.08 Businesses and organizations; late filing fee; violation; penalty.

(1) Any entity specified in subsection (1) of section 49-1469 which fails to file a report with the commission required by section 49-1469 or 49-1469.07 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of such sections, not to exceed seven hundred fifty dollars.

(2) Any person who knowingly violates this section, section 49-1469, 49-1469.05, 49-1469.06, or 49-1469.07 shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 242, § 23; Laws 2013, LB79, § 22.

49-1477 Contributions from persons other than committee; information required; violation; penalty.

No person shall receive a contribution from a person other than a committee unless, for purposes of the recipient person's record-keeping and reporting requirements, the contribution is accompanied by the name and address of each person who contributed more than one hundred dollars to the contribution. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 77; Laws 1977, LB 41, § 50; Laws 2013, LB79, § 23; Laws 2014, LB946, § 32.

Operative date January 1, 2015.

49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee.

(1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

Source: Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3; Laws 2013, LB79, § 24; Laws 2014, LB946, § 33. Operative date January 1, 2015.

(c) LOBBYING PRACTICES**49-1483 Lobbyist and principal; file separate statements; when; contents.**

(1) Every lobbyist who is registered or required to be registered shall, for each of his or her principals, file electronically a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter. Every principal employing a lobbyist who is registered or required to be registered shall file electronically a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter.

(2) Each statement shall show the following:

(a) The total amount received or expended directly or indirectly for the purpose of carrying on lobbying activities, with the following categories of

expenses each being separately itemized: (i) Miscellaneous expenses; (ii) entertainment, including expenses for food and drink as provided in subdivision (3)(a) of this section; (iii) lodging expenses; (iv) travel expenses; (v) lobbyist compensation, except that when a principal retains the services of a person who has only part-time lobbying duties, only the compensation paid which is reasonably attributable to influencing legislative action need be reported; (vi) lobbyist expense reimbursement; (vii) admissions to a state-owned facility or a state-sponsored industry or event as provided in subdivision (3)(a) of this section; and (viii) extraordinary office expenses directly related to the practice of lobbying;

(b) A detailed statement of any money which is loaned, promised, or paid by a lobbyist, a principal, or anyone acting on behalf of either to an official in the executive or legislative branch or member of such official's staff. The detailed statement shall identify the recipient and the amount and the terms of the loan, promise, or payment; and

(c) The total amount expended for gifts, other than admissions to a state-owned facility or a state-sponsored industry or event, as provided in subdivision (3)(a) of this section.

(3)(a) Each statement shall disclose the aggregate expenses for entertainment, admissions, and gifts for each of the following categories of elected officials: Members of the Legislature; and officials in the executive branch of the state. Such disclosures shall be in addition to the entertainment expenses reported under subdivision (2)(a)(ii) of this section, admissions reported under subdivision (2)(a)(vii) of this section, and gifts reported under subdivision (2)(c) of this section.

(b) For purposes of reporting aggregate expenses for entertainment for members of the Legislature and officials in the executive branch of the state as required by subdivision (3)(a) of this section, the reported amount shall include the actual amounts attributable to entertaining members of the Legislature and officials in the executive branch of the state. When the nature of an event at which members of the Legislature are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of members of the Legislature in attendance. When the nature of an event at which officials in the executive branch of the state are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of officials in the executive branch of the state in attendance. For purposes of this subdivision, the average cost per person means the cost of the event divided by the number of persons expected to attend the event.

(4) The lobbyist shall also file any changes or corrections to the information set forth in the registration required pursuant to section 49-1480 so as to reflect the correctness of such information as of the end of each calendar quarter for which such statement is required by this section.

(5) If a lobbyist does not expect to receive lobbying receipts from or does not expect to make lobbying expenditures for a principal, the quarterly statements required by this section as to such principal need not be filed by the lobbyist if the principal and lobbyist both certify such facts electronically to the Clerk of the Legislature. A lobbyist exempt from filing quarterly statements pursuant to this section shall (a) file a statement of activity pursuant to section 49-1488 and (b) resume or commence filing quarterly statements with regard to such

principal starting with the quarterly period the lobbyist receives lobbying receipts or makes lobbying expenditures for such principal.

(6) If a principal does not expect to receive lobbying receipts or does not expect to make lobbying expenditures, the quarterly statements required pursuant to this section need not be filed by the principal if the principal and lobbyist both certify such facts electronically to the Clerk of the Legislature. A principal exempt from filing quarterly statements pursuant to this section shall commence or resume filing quarterly statements starting with the quarterly period the principal receives lobbying receipts or makes lobbying expenditures.

(7) A principal shall report electronically the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.

(8) For purposes of sections 49-1480 to 49-1492.01, calendar quarter means the first day of January through the thirty-first day of March, the first day of April through the thirtieth day of June, the first day of July through the thirtieth day of September, and the first day of October through the thirty-first day of December.

Source: Laws 1976, LB 987, § 83; Laws 1979, LB 162, § 4; Laws 1983, LB 479, § 2; Laws 1991, LB 232, § 4; Laws 1994, LB 872, § 4; Laws 1994, LB 1243, § 5; Laws 2000, LB 1021, § 5; Laws 2001, LB 242, § 8; Laws 2005, LB 242, § 33; Laws 2012, LB782, § 70.
Operative date January 1, 2015.

49-1483.03 Lobbyist or principal; special report required; when; late filing fee.

(1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall, within fifteen days after the end of such calendar month, file electronically a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

Source: Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4; Laws 2012, LB782, § 71.
Operative date January 1, 2015.

49-1488 Registered lobbyist; statement of activity during regular or special session; when filed.

Within forty-five days after the completion of every regular or special session of the Legislature, each registered lobbyist shall submit electronically to the Clerk of the Legislature a statement listing the legislation upon which the lobbyist acted, including identification by number of any bill or resolution and the position taken by the lobbyist.

Source: Laws 1976, LB 987, § 88; Laws 1991, LB 232, § 5; Laws 1994, LB 872, § 10; Laws 1994, LB 1243, § 11; Laws 2012, LB782, § 72.

Operative date January 1, 2015.

49-1488.01 Statements; late filing fee; reduction or waiver; when.

(1) Every lobbyist who fails to file a quarterly statement or a statement of activity with the Clerk of the Legislature, pursuant to sections 49-1483 and 49-1488, shall pay to the commission a late filing fee of twenty-five dollars for each day any of such statements are not filed in violation of such sections, but not to exceed seven hundred fifty dollars per statement.

(2) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section may apply to the commission for relief. The commission by order may reduce the amount of the late filing fee imposed upon such lobbyist if he or she shows the commission that (a) the circumstances indicate no intent to file late, (b) the lobbyist has not been required to pay a late filing fee for two years prior to the time the filing of the statement was due, (c) the late filing of the statement shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fee would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(3) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section who qualifies for an exemption to the filing of quarterly statements pursuant to subsection (5) of section 49-1483 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and the person shall not be required to make a showing as provided by subsection (2) of this section.

Source: Laws 1991, LB 232, § 7; Laws 1994, LB 872, § 11; Laws 1994, LB 1243, § 12; Laws 1998, LB 632, § 6; Laws 1999, LB 416, § 18; Laws 2005, LB 242, § 35; Laws 2013, LB79, § 25; Laws 2014, LB946, § 34.

Operative date January 1, 2015.

49-1492.01 Agency, political subdivision, or publicly funded postsecondary educational institution; gifts; reporting requirements; violations; penalty.

(1) Any agency, political subdivision, or publicly funded postsecondary educational institution which gives a gift of an admission to a state-owned facility or a state-sponsored industry or event to a public official, a member of a public official's staff, or a member of the immediate family of a public official shall report the gift on a form prescribed by the commission.

(2) The report shall be filed electronically with the Clerk of the Legislature within fifteen days after the end of the calendar quarter in which the gift is given. The report shall include the following:

(a) The identity of the agency, political subdivision, or publicly funded postsecondary educational institution;

(b) A description of the gift;

(c) The value of the gift; and

(d) The name of the recipient of the gift and the following:

(i) If the recipient is an official in the executive or legislative branch of state government, the office held by the official and the branch he or she serves;

(ii) If the recipient is a member of an official's staff in the executive or legislative branch of state government, his or her job title and the name of the official; or

(iii) If the recipient is a member of the immediate family of an official in the executive or legislative branch of state government, his or her relationship to the official and the name of the official.

(3) For purposes of this section, public official does not include an elected or appointed official of a political subdivision or school board.

(4) Any person who knowingly and intentionally violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 2000, LB 1021, § 7; Laws 2012, LB782, § 73.

(d) CONFLICTS OF INTEREST

49-14,102 Contracts with government bodies; procedure; powers of certain cities; purpose.

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

(5) Notwithstanding any other provision of this section, any city of the metropolitan, primary, or first class may prohibit contracts over a specific dollar amount in which a public official or a public employee of such city may have an interest.

(6) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

(7) This section does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

Source: Laws 1976, LB 987, § 102; Laws 2005, LB 242, § 46; Laws 2014, LB364, § 1.

Effective date July 18, 2014.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,120 Commission; members; expenses.

All members of the commission shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55; Laws 2011, LB292, § 1.

49-14,122 Commission; field investigations and audits; purpose.

The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission under the Nebraska Political Accountability and Disclosure Act. Any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his or her opponent or opponents as well. The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report, or other statement filed under the act if the commission or the executive director deems such investigations or audits necessary to carry out the purposes of the act.

Source: Laws 1976, LB 987, § 122; Laws 1993, LB 587, § 18; Laws 2013, LB79, § 26.

49-14,123 Commission; duties.

In addition to any other duties prescribed by law, the commission shall:

(1) Adopt and promulgate rules and regulations to carry out the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the act and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the act;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the act;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the act upon the request of a person or government body directly covered or affected by the act. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations adopted and promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act and remit all such funds to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Source: Laws 1976, LB 987, § 123; Laws 1981, LB 134, § 9; Laws 1981, LB 545, § 13; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12; Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3; Laws 2013, LB79, § 27.

Cross References

Administrative Procedure Act, see section 84-920.

49-14,124 Alleged violation; preliminary investigation by commission; powers; notice.

(1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon:

(a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;

(b) The recommendation of the executive director; or

(c) The commission's own motion.

(2) For purposes of conducting preliminary investigations under the Nebraska Political Accountability and Disclosure Act, the commission shall have the powers possessed by the courts of this state to issue subpoenas, and the district court shall have jurisdiction to enforce such subpoenas.

(3) The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days after the commencement of the investigation.

(4) Within fifteen days after the filing of a sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged

violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

(5) Each governing body shall cooperate with the commission in the conduct of its investigations.

Source: Laws 1976, LB 987, § 124; Laws 1997, LB 49, § 10; Laws 1997, LB 420, § 21; Laws 1999, LB 578, § 1; Laws 2005, LB 242, § 57; Laws 2006, LB 188, § 16; Laws 2013, LB79, § 28.

49-14,124.01 Preliminary investigation; confidential; exception.

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act requests that the proceedings be public. If the commission determines that there was no violation of the act or any rule or regulation adopted and promulgated under the act, the records and actions relative to the investigation and determination shall remain confidential unless the alleged violator requests that the records and actions be made public. If the commission determines that there was a violation, the records and actions shall be made public as soon as practicable after the determination is made.

Source: Laws 2005, LB 242, § 58; Laws 2013, LB79, § 29.

49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.

At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

Source: Laws 2007, LB464, § 4; Laws 2013, LB79, § 30.

49-14,125 Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.

(1) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is no probable cause for belief that a person has violated the Nebraska Political Accountability and Disclosure Act or any rule or regulation adopted and promulgated thereunder or if the commission determines that there is insufficient evidence to reasonably believe that the person could be found to have violated the act, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that the Nebraska

Political Accountability and Disclosure Act or a rule or regulation adopted and promulgated thereunder has been violated and if the commission determines that there is sufficient evidence to reasonably believe that the person could be found to have violated the act, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. The commission may appoint a hearing officer to preside over the proceedings.

(3) All proceedings of the commission pursuant to this section shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of the act or any rule or regulation adopted and promulgated thereunder requests an open session.

(4) The commission shall have the powers possessed by the courts of this state to issue subpoenas in connection with proceedings under this section, and the district court shall have jurisdiction to enforce such subpoenas.

(5) All testimony shall be under oath which shall be administered by a member of the commission, the hearing officer, or any other person authorized by law to administer oaths and affirmations.

(6) Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state.

(7) All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court.

(8) Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding.

(9) The commission shall cause a record to be made of all proceedings pursuant to this section.

(10) At the conclusion of proceedings concerning an alleged violation, the commission shall deliberate on the evidence and determine whether there has been a violation of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10; Laws 1997, LB 420, § 22; Laws 1999, LB 578, § 2; Laws 2005, LB 242, § 59; Laws 2006, LB 188, § 17; Laws 2013, LB79, § 31.

49-14,126 Commission; violation; orders; civil penalty; costs of hearing.

The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

(1) Cease and desist from the violation;

(2) File any report, statement, or other information as required;

(3) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation; or

(4) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5; Laws 2011, LB176, § 1; Laws 2013, LB79, § 32.

49-14,129 Commission; suspend or modify reporting requirements; conditions.

The commission, by order, may suspend or modify any of the reporting requirements of the Nebraska Political Accountability and Disclosure Act, in a particular case, for good cause shown, or if it finds that literal application of the act works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required by this section.

Source: Laws 1976, LB 987, § 129; Laws 1980, LB 535, § 19; Laws 1993, LB 587, § 19; Laws 2013, LB79, § 33.

49-14,132 Filings; limitation of use.

Information copied from campaign statements, registration forms, activity reports, statements of financial interest, and other filings required by the Nebraska Political Accountability and Disclosure Act shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that (1) the name and address of any political committee or entity specified in subsection (1) of section 49-1469 may be used for soliciting contributions from such committee or entity and (2) the use of information copied or otherwise obtained from statements, forms, reports, and other filings required by the act in newspapers, magazines, books, or other similar communications is permissible as long as the principal purpose of using such information is not to communicate any contributor information listed thereon for the purpose of soliciting contributions or for other commercial purposes.

Source: Laws 1976, LB 987, § 132; Laws 1981, LB 134, § 12; Laws 2005, LB 242, § 61; Laws 2013, LB79, § 34.

49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.

The Attorney General has jurisdiction to enforce the criminal provisions of the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the act occurs shall have concurrent jurisdiction.

Source: Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6; Laws 2013, LB79, § 35.

49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-14,123, and 49-14,123.01 and subdivision (4) of section 49-14,126. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act. Any money in the Nebraska Accountability and Disclosure Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

On April 25, 2013, the State Treasurer shall transfer \$630,870 from the Campaign Finance Limitation Cash Fund to the Nebraska Accountability and Disclosure Commission Cash Fund to be used for development, implementation, and maintenance of an electronic filing system for campaign statements and other reports under the Nebraska Political Accountability and Disclosure Act and for making such statements and reports available to the public on the web site of the commission. The State Treasurer shall transfer the balance of the Campaign Finance Limitation Cash Fund to the Election Administration Fund on or before July 5, 2013, or as soon thereafter as administratively possible.

Source: Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25; Laws 2011, LB176, § 2; Laws 2013, LB79, § 36.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(f) **DIGITAL AND ELECTRONIC FILING**

49-14,141 Electronic filing system; campaign statements and reports; availability; procedures for filings.

(1) The commission shall develop, implement, and maintain an electronic filing system for campaign statements and other reports required to be filed with the commission under the Nebraska Political Accountability and Disclosure Act and shall provide for such statements and reports to be made available to the public on its web site as soon as practicable.

(2) The commission may adopt procedures for the digital and electronic filing of any report or statement with the commission as required by the act. Any procedures for digital filing shall comply with the provisions of section 86-611. The commission may adopt authentication procedures to be used as a verification process for statements or reports filed digitally or electronically. Compliance with authentication procedures adopted by the commission shall have the same validity as a signature on any report, statement, or verification statement.

Source: Laws 1999, LB 581, § 3; Laws 2002, LB 1105, § 438; Laws 2013, LB79, § 37.

ARTICLE 15

NEBRASKA SHORT FORM ACT

Section
49-1501. Repealed. Laws 2012, LB 1113, § 50.

- 49-1501 Repealed. Laws 2012, LB 1113, § 50.
- 49-1502 Repealed. Laws 2012, LB 1113, § 50.
- 49-1503 Repealed. Laws 2012, LB 1113, § 50.
- 49-1504 Repealed. Laws 2012, LB 1113, § 50.
- 49-1505 Repealed. Laws 2012, LB 1113, § 50.
- 49-1506 Repealed. Laws 2012, LB 1113, § 50.
- 49-1507 Repealed. Laws 2012, LB 1113, § 50.
- 49-1508 Repealed. Laws 2012, LB 1113, § 50.
- 49-1509 Repealed. Laws 2012, LB 1113, § 50.
- 49-1510 Repealed. Laws 2012, LB 1113, § 50.
- 49-1511 Repealed. Laws 2012, LB 1113, § 50.
- 49-1512 Repealed. Laws 2012, LB 1113, § 50.
- 49-1513 Repealed. Laws 2012, LB 1113, § 50.
- 49-1514 Repealed. Laws 2012, LB 1113, § 50.
- 49-1515 Repealed. Laws 2012, LB 1113, § 50.
- 49-1516 Repealed. Laws 2012, LB 1113, § 50.
- 49-1517 Repealed. Laws 2012, LB 1113, § 50.
- 49-1518 Repealed. Laws 2012, LB 1113, § 50.
- 49-1519 Repealed. Laws 2012, LB 1113, § 50.
- 49-1520 Repealed. Laws 2012, LB 1113, § 50.
- 49-1521 Repealed. Laws 2012, LB 1113, § 50.
- 49-1522 Repealed. Laws 2012, LB 1113, § 50.
- 49-1523 Repealed. Laws 2012, LB 1113, § 50.
- 49-1524 Repealed. Laws 2012, LB 1113, § 50.
- 49-1525 Repealed. Laws 2012, LB 1113, § 50.
- 49-1526 Repealed. Laws 2012, LB 1113, § 50.
- 49-1527 Repealed. Laws 2012, LB 1113, § 50.
- 49-1528 Repealed. Laws 2012, LB 1113, § 50.
- 49-1529 Repealed. Laws 2012, LB 1113, § 50.
- 49-1530 Repealed. Laws 2012, LB 1113, § 50.
- 49-1531 Repealed. Laws 2012, LB 1113, § 50.

- 49-1532 Repealed. Laws 2012, LB 1113, § 50.
- 49-1533 Repealed. Laws 2012, LB 1113, § 50.
- 49-1534 Repealed. Laws 2012, LB 1113, § 50.
- 49-1535 Repealed. Laws 2012, LB 1113, § 50.
- 49-1536 Repealed. Laws 2012, LB 1113, § 50.
- 49-1537 Repealed. Laws 2012, LB 1113, § 50.
- 49-1538 Repealed. Laws 2012, LB 1113, § 50.
- 49-1539 Repealed. Laws 2012, LB 1113, § 50.
- 49-1540 Repealed. Laws 2012, LB 1113, § 50.
- 49-1541 Repealed. Laws 2012, LB 1113, § 50.
- 49-1542 Repealed. Laws 2012, LB 1113, § 50.
- 49-1543 Repealed. Laws 2012, LB 1113, § 50.
- 49-1544 Repealed. Laws 2012, LB 1113, § 50.
- 49-1545 Repealed. Laws 2012, LB 1113, § 50.
- 49-1546 Repealed. Laws 2012, LB 1113, § 50.
- 49-1547 Repealed. Laws 2012, LB 1113, § 50.
- 49-1548 Repealed. Laws 2012, LB 1113, § 50.
- 49-1549 Repealed. Laws 2012, LB 1113, § 50.
- 49-1550 Repealed. Laws 2012, LB 1113, § 50.
- 49-1551 Repealed. Laws 2012, LB 1113, § 50.
- 49-1552 Repealed. Laws 2012, LB 1113, § 50.
- 49-1553 Repealed. Laws 2012, LB 1113, § 50.
- 49-1554 Repealed. Laws 2012, LB 1113, § 50.
- 49-1555 Repealed. Laws 2012, LB 1113, § 50.
- 49-1556 Repealed. Laws 2012, LB 1113, § 50.
- 49-1557 Repealed. Laws 2012, LB 1113, § 50.
- 49-1558 Repealed. Laws 2012, LB 1113, § 50.
- 49-1559 Repealed. Laws 2012, LB 1113, § 50.
- 49-1560 Repealed. Laws 2012, LB 1113, § 50.
- 49-1561 Repealed. Laws 2012, LB 1113, § 50.
- 49-1562 Repealed. Laws 2012, LB 1113, § 50.



CHAPTER 50 LEGISLATURE

Article.

1. General Provisions. 50-114.03.
4. Legislative Council. 50-401.01 to 50-444.
5. Planning. 50-502 to 50-508.
11. Legislative Districts. 50-1101 to 50-1154.
12. Legislative Performance Audit Act. 50-1202 to 50-1214.
13. Review of Boards and Commissions. 50-1302.

ARTICLE 1 GENERAL PROVISIONS

Section

50-114.03. Clerk; reports; list; distribution; establish requirements for reports.

50-114.03 Clerk; reports; list; distribution; establish requirements for reports.

(1) The Clerk of the Legislature shall periodically prepare and distribute electronically to all members of the Legislature a list of all reports received from state agencies, boards, and commissions. Such lists shall be prepared and distributed to each legislator no less frequently than once during the first ten days of each legislative session. Upon request by a legislator, the clerk shall arrange for any legislator to receive an electronic copy of any such report.

(2) A state agency, board, or commission or other public entity which is required to provide a report to the Legislature shall submit the report electronically. The Clerk of the Legislature may establish requirements for the electronic submission, distribution, and format of such reports. The clerk may accept a report in written form only upon a showing of good cause.

Source: Laws 1979, LB 322, § 79; Laws 2003, LB 114, § 1; Laws 2012, LB719, § 2; Laws 2012, LB782, § 74.

ARTICLE 4 LEGISLATIVE COUNCIL

Section

- 50-401.01. Legislative Council; executive board; members; selection; powers and duties.
- 50-405. Legislative Council; duties; investigations; studies.
- 50-406. Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.
- 50-407. Legislative Council; committees; subpoenas; enforcement; refusal to testify.
- 50-413. Legislative Council; minutes of meetings; reports.
- 50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
- 50-417.02. Repealed. Laws 2011, LB 509, § 55.
- 50-417.03. Repealed. Laws 2011, LB 509, § 55.
- 50-417.04. Repealed. Laws 2011, LB 509, § 55.
- 50-417.05. Repealed. Laws 2011, LB 509, § 55.
- 50-417.06. Repealed. Laws 2011, LB 509, § 55.

Section

- 50-422. Repealed. Laws 2012, LB 782, § 253.
- 50-424. Health and Human Services Committee; implementation of child welfare reform recommendations; report.
- 50-425. Education Committee of Legislature; study uses of State Lottery Act proceeds dedicated to education; report.
- 50-426. Statewide vision for education; legislative findings.
- 50-427. Statewide vision for education; Education Committee of Legislature; duties; report.
- 50-444. Repealed. Laws 2012, LB 706, § 1.

50-401.01 Legislative Council; executive board; members; selection; powers and duties.

(1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 17, 30, 32 to 38, 40 to 44, 47, and 48, two from legislative districts Nos. 2, 3, 15, 16, 19, 21 to 29, 45, and 46, and two from legislative districts Nos. 4 to 14, 18, 20, 31, 39, and 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature, including the adoption of policies by the executive board which permit (i) the purchasing of an annuity for an employee who retires or (ii) the crediting of amounts to an employee's deferred compensation account under section 84-1504. The payments to or on behalf of an employee may be staggered to comply with other law; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. The Legislative Performance Audit Committee shall recommend the person to be appointed Legislative Auditor. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

Source: Laws 1937, c. 118, § 1, p. 421; Laws 1939, c. 60, § 1, p. 261; C.S.Supp.,1941, § 50-501; Laws 1943, c. 118, § 1, p. 414; R.S.

1943, § 50-401; Laws 1949, c. 168, § 1(2), p. 445; Laws 1951, c. 169, § 1, p. 655; Laws 1965, c. 310, § 1, p. 872; Laws 1967, c. 595, § 1, p. 2026; Laws 1972, LB 1129, § 1; Laws 1973, LB 485, § 3; Laws 1992, LB 898, § 1; Laws 1993, LB 579, § 2; Laws 1994, LB 1243, § 18; Laws 1997, LB 314, § 2; Laws 2001, LB 75, § 1; Laws 2003, LB 510, § 1; Laws 2006, LB 956, § 1; Laws 2012, LB711, § 1.

50-405 Legislative Council; duties; investigations; studies.

It shall be the duty of the council (1) to investigate and study the possibilities for consolidation in state government for elimination of all unnecessary activities and of all duplication in office personnel and equipment and of the coordination of departmental activities or of methods of increasing efficiency and effecting economies, (2) to investigate and study the possibilities of reforming the system of local government with a view to simplifying the organization of government, (3) to study the merit system as it relates to state and local government personnel, (4) to cooperate with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods, (5) to study and inquire into the financial administration of the state government and the subdivisions thereof, the problems of taxation, including assessment and collection of taxes, and the distribution of the tax burden, and (6) to study and inquire into future planning of capital construction of the state and its governmental agencies as to location and sites for expansion.

Source: Laws 1937, c. 118, § 3, p. 422; C.S.Supp.,1941, § 50-503; R.S. 1943, § 50-405; Laws 1969, c. 431, § 1, p. 1453; Laws 1986, LB 996, § 1; Laws 2012, LB782, § 75; Laws 2013, LB222, § 17.

50-406 Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.

In the discharge of any duty imposed by the Legislative Council, by statute, or by a resolution of the Legislature, the council, any committee thereof, and any standing or special committee created by statute or resolution of the Legislature may hold public hearings and may administer oaths, issue subpoenas when the committee has received prior approval by a majority vote of the Executive Board of the Legislative Council to issue subpoenas in connection with the specific inquiry or investigation in question, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. The council or the committee may require any state agency, political subdivision, or person to provide information relevant to the committee's work, and the state agency, political subdivision, or person shall provide the information requested within thirty days after the request except as provided for in a subpoena. The statute or resolution creating a committee may prescribe limitations on the authority granted by this section.

Litigation to compel or quash compliance with authority exercised pursuant to this section shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered.

The district court of Lancaster County has jurisdiction over all litigation arising under this section. In all such litigation the executive board shall provide for legal representation for the council or committee.

Source: Laws 1937, c. 118, § 4, p. 422; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-406; Laws 1949, c. 168, § 3, p. 445; Laws 1965, c. 313, § 1, p. 875; Laws 2013, LB613, § 1.

50-407 Legislative Council; committees; subpoenas; enforcement; refusal to testify.

In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, the district court of Lancaster County or the judge thereof, on application of a member of the council, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

If a witness refuses to testify before a special committee of the Legislature authorized pursuant to section 50-404 on the basis of the privilege against self-incrimination, the chairperson of the committee may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

Source: Laws 1937, c. 118, § 4, p. 423; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-407; Laws 1949, c. 168, § 4, p. 445; Laws 1990, LB 1246, § 16; Laws 2013, LB613, § 2.

50-413 Legislative Council; minutes of meetings; reports.

The Legislative Council shall keep complete minutes of its meetings and shall submit electronically periodical reports to the members of the Legislature.

Source: Laws 1937, c. 118, § 9, p. 424; C.S.Supp.,1941, § 50-509; R.S. 1943, § 50-413; Laws 1949, c. 168, § 7, p. 446; Laws 2012, LB782, § 76.

50-417 Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.

The Nebraska Retirement Systems Committee shall study any legislative proposal, bill, or amendment, other than an amendment proposed by the Committee on Enrollment and Review, affecting any public retirement system, existing or proposed, established by the State of Nebraska or any political subdivision thereof and report electronically the results of such study to the Legislature, which report shall, when applicable, include an actuarial analysis and cost estimate and the recommendation of the Nebraska Retirement Systems Committee regarding passage of any bill or amendment. To assist the committee in the performance of such duties, the committee may consult with and utilize the services of any officer, department, or agency of the state and may from time to time engage the services of a qualified and experienced actuary. In the absence of any report from such committee, the Legislature shall consider requests from groups seeking to have retirement plans estab-

lished for them and such other proposed legislation as is pertinent to existing retirement systems.

Source: Laws 1959, c. 243, § 2, p. 832; Laws 1989, LB 189, § 2; Laws 2011, LB10, § 1; Laws 2012, LB782, § 77.

50-417.02 Repealed. Laws 2011, LB 509, § 55.

50-417.03 Repealed. Laws 2011, LB 509, § 55.

50-417.04 Repealed. Laws 2011, LB 509, § 55.

50-417.05 Repealed. Laws 2011, LB 509, § 55.

50-417.06 Repealed. Laws 2011, LB 509, § 55.

50-422 Repealed. Laws 2012, LB 782, § 253.

50-424 Health and Human Services Committee; implementation of child welfare reform recommendations; report.

On December 15 of 2012, 2013, and 2014, the Health and Human Services Committee of the Legislature shall provide a report to the Legislature, Governor, and Chief Justice of the Supreme Court with respect to the progress made by the Department of Health and Human Services implementing the recommendations of the committee contained in the final report of the study conducted by the committee pursuant to Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011. The report submitted to the Legislature shall be submitted electronically. In order to facilitate such report, the department shall provide electronically to the committee by September 15 of 2012, 2013, and 2014 the reports required pursuant to sections 43-296, 43-534, 68-1207.01, 71-825, 71-1904, and 71-3407 and subdivision (6) of section 43-405. The Children's Behavioral Health Oversight Committee of the Legislature shall provide its final report to the Health and Human Services Committee of the Legislature on or before September 15, 2012.

Source: Laws 2012, LB1160, § 10; Laws 2013, LB222, § 18.

50-425 Education Committee of Legislature; study uses of State Lottery Act proceeds dedicated to education; report.

The Education Committee of the Legislature shall conduct a study of potential uses of the funds dedicated to education from proceeds of the lottery conducted pursuant to the State Lottery Act. The committee shall submit a report electronically on the findings and any recommendations to the Clerk of the Legislature on or before December 31, 2014. Factors the study shall consider, but not be limited to, include:

- (1) The educational priorities of the state;
- (2) What types of educational activities are suited to being funded by state lottery funds as opposed to state general funds;
- (3) Whether state lottery funds should be used for significant projects requiring temporary funding or to sustain ongoing activities; and
- (4) Whether periodic reviews of the use of lottery funds for education should be scheduled.

Source: Laws 2013, LB497, § 3.

State Lottery Act, see section 9-801.

50-426 Statewide vision for education; legislative findings.

(1) The Legislature finds that:

(a) In order to continue the pursuit of the good life in Nebraska, a common statewide vision must be refined to address the potential of all students across the state; and

(b) Individuals and businesses making reasoned decisions about where to locate often place the quality of education as one of the primary considerations. Quality education not only serves as an indicator of the current quality of life in a community but also as a determinant for what lies ahead.

(2) It is the intent of the Legislature to focus educational resources from all sources in our state toward a common statewide vision for the future through collaborative efforts to achieve the best possible results for all Nebraskans, our communities, and our state.

Source: Laws 2014, LB1103, § 1.
Effective date April 3, 2014.

50-427 Statewide vision for education; Education Committee of Legislature; duties; report.

The Education Committee of the Legislature shall conduct a strategic planning process to create the statewide vision for education in Nebraska described in section 50-426 which shall include aspirational goals, visionary objectives, meaningful priorities, and practical strategies. The committee or subcommittees thereof may conduct meetings, work sessions, and focus groups with individuals and representatives of educational interests, taxpayer groups, the business community, or any other interested entities. The committee shall also hold at least three public hearings to receive testimony from the general public in locations that represent a variety of educational situations. The committee shall submit a report regarding such process electronically to the Clerk of the Legislature on or before December 31, 2014.

Source: Laws 2014, LB1103, § 2.
Effective date April 3, 2014.

50-444 Repealed. Laws 2012, LB 706, § 1.

ARTICLE 5

PLANNING

Section

50-502. Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.

50-503. University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.

50-504. Water Funding Task Force; legislative findings.

50-505. Water Funding Task Force; created; members; qualifications; expenses.

50-506. Water Funding Task Force; consultation with other groups; meetings; consultant; termination.

50-507. Water Funding Task Force; report; contents.

50-508. Water Funding Task Force; funding; Department of Natural Resources; duties.

50-502 Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.

The Department of Administrative Services shall, on or before December 1 of each year, present its plan regarding the management of the state's health care insurance programs and the health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

Source: Laws 2013, LB620, § 1.

50-503 University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.

The University of Nebraska shall, on or before December 1 of each year, present its plan regarding the management of the university's health care insurance programs and its health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

Source: Laws 2013, LB620, § 2.

50-504 Water Funding Task Force; legislative findings.

The Legislature finds that:

(1) Nebraska's water resources are finite and must be wisely managed to ensure their continued availability for beneficial use;

(2) The state must invest in: (a) Research and data gathering; (b) further integrating the management of Nebraska's water supplies; (c) improving the state's aging and antiquated water supply infrastructure; (d) building new water supply infrastructure; (e) promoting coordination and collaboration among all water users; and (f) providing information to policymakers to justify a stable source of project funds;

(3) To determine the costs of effective conservation, sustainability, and management of Nebraska's water resources, the state's identified water needs must be compiled and organized and a process must be established in order to identify statewide projects and research recommendations; and

(4) To facilitate the creation of a funding process, a collaborative effort of experts representing all water interests and areas of the state is important to ensure fair and balanced water funding.

Source: Laws 2013, LB517, § 1.

50-505 Water Funding Task Force; created; members; qualifications; expenses.

(1) The Water Funding Task Force is created. The task force shall consist of the members of the Nebraska Natural Resources Commission and eleven additional members to be appointed by the Governor. The Director of Natural Resources or his or her designee, the chairperson of the Natural Resources Committee of the Legislature or his or her designee, and five additional members of the Legislature appointed by the Executive Board of the Legislative

Council shall be nonvoting, ex officio members of the task force. In appointing members to the task force, the Governor:

(a) Shall seek to create a broad-based task force with knowledge of and experience with and representative of Nebraska's water use and economy;

(b) Shall give equal recognition to the importance of both water quantity and water quality;

(c) Shall appoint one member from each of the following categories: Public power; public power and irrigation districts; irrigation districts; a metropolitan utilities district; municipalities; agriculture; wildlife conservation; livestock producers; agribusiness; manufacturing; and outdoor recreation users; and

(d) May solicit and accept nominations for appointments to the task force from recognized water interest groups in Nebraska.

(2) The members of the task force appointed by the Governor shall represent diverse geographic regions of the state, including urban and rural areas. Such members shall be appointed within thirty days after June 5, 2013. Members shall begin serving immediately following notice of appointment. Members shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties as members as provided in sections 81-1174 to 81-1177.

Source: Laws 2013, LB517, § 2.

50-506 Water Funding Task Force; consultation with other groups; meetings; consultant; termination.

(1) The Water Funding Task Force may consult with other groups in its work, including, but not limited to, the University of Nebraska, the Department of Environmental Quality, the Game and Parks Commission, the United States Army Corps of Engineers, the United States Geological Survey, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, and the Natural Resources Conservation Service of the United States Department of Agriculture.

(2) For administrative and budgetary purposes, the task force shall be housed within the Department of Natural Resources. Additional advisory support may be requested from appropriate federal and state agencies.

(3) The task force may meet as necessary and may hire a consultant or consultants to facilitate the work and meetings of the task force and enter into agreements to achieve the objectives of the task force. The task force may create and use working groups or subcommittees as it deems necessary. Any contracts or agreements entered into under this subsection shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-510.

(4) The Water Funding Task Force terminates on December 31, 2013.

Source: Laws 2013, LB517, § 3.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

50-507 Water Funding Task Force; report; contents.

(1) On or before December 31, 2013, the Water Funding Task Force shall develop and provide a report electronically to the Legislature which contains the following:

(a) Recommendations for a strategic plan which prioritizes programs, projects, and activities in need of funding. The recommendations shall give equal consideration to and be classified into the following categories:

(i) Research, data, and modeling needed to assist the state in meeting its water management goals;

(ii) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance;

(iii) Conjunctive management, storage, and integrated management of ground water and surface water; and

(iv) Compliance with interstate compacts or agreements or other formal state contracts or agreements;

(b) Recommendations for ranking criteria to identify funding priorities based on, but not limited to, the following factors:

(i) The extent to which the program, project, or activity provides increased water productivity and otherwise maximizes the beneficial use of Nebraska's water resources for the benefit of its residents;

(ii) The extent to which the program, project, or activity assists the state in meeting its obligations under interstate compacts or decrees or other formal state contracts or agreements;

(iii) The extent to which the program, project, or activity utilizes objectives described in the Annual Report and Plan of Work for the Nebraska State Water Planning and Review Process issued by the Department of Natural Resources;

(iv) The extent to which the program, project, or activity has been approved for, but has not received, funding through an established state program;

(v) The cost-effectiveness of the program, project, or activity relative to achieving the state's water management goals;

(vi) The extent to which the program, project, or activity contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources; and

(vii) The extent to which the program, project, or activity contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural uses, recreation benefits, wildlife habitat, conservation of water resources, and preservation of water resources for future generations;

(c) Recommendations for legislation on a permanent structure and process through which the programs, projects, or activities described in this section will be provided with funding, including:

(i) A permanent governing board structure and membership;

(ii) An application process;

(iii) A statewide project distribution mechanism; and

(iv) A timeframe for funding allocations based on the list of programs, projects, and activities provided for in this section;

(d) Recommendations for the annual funding amount and the start date for distribution of funds; and

(e) Recommendations for statutory changes relating to regulatory authorities and to funds and programs administered by, and boards and commissions under the direction of, the department, based on the task force's evaluation of the efficiency of such funds, programs, boards, and commissions.

(2) The task force shall make every effort to identify and consult with all water-use stakeholder groups in Nebraska on the development of the recommendations required under sections 50-504 to 50-507.

Source: Laws 2013, LB517, § 4.

50-508 Water Funding Task Force; funding; Department of Natural Resources; duties.

The Department of Natural Resources shall establish a separate budget subprogram to account for funds appropriated to carry out sections 50-504 to 50-507. No later than February 1, 2014, the department shall notify the Natural Resources Committee of the Legislature and the Appropriations Committee of the Legislature regarding the projected unexpended and uncommitted balance remaining in the separate budget subprogram.

Source: Laws 2013, LB517, § 5.

ARTICLE 11

LEGISLATIVE DISTRICTS

Section

| | |
|-------------|-----------------------------------|
| 50-1101. | Transferred to section 50-1153. |
| 50-1102. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1103. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1104. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1105. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1106. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1107. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1108. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1109. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1110. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1111. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1112. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1113. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1114. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1115. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1116. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1117. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1118. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1119.01. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1120. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1121. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1122. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1123. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1124. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1125. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1126. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1127. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1128. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1129. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1130. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1131. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1132. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1133. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1134. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1135. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1136. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1137. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1138. | Repealed. Laws 2011, LB 703, § 5. |
| 50-1139. | Repealed. Laws 2011, LB 703, § 5. |

Section

- 50-1140. Repealed. Laws 2011, LB 703, § 5.
50-1141.01. Repealed. Laws 2011, LB 703, § 5.
50-1142. Repealed. Laws 2011, LB 703, § 5.
50-1143. Repealed. Laws 2011, LB 703, § 5.
50-1144. Repealed. Laws 2011, LB 703, § 5.
50-1145. Repealed. Laws 2011, LB 703, § 5.
50-1146. Repealed. Laws 2011, LB 703, § 5.
50-1147. Repealed. Laws 2011, LB 703, § 5.
50-1148. Repealed. Laws 2011, LB 703, § 5.
50-1149. Repealed. Laws 2011, LB 703, § 5.
50-1150. Repealed. Laws 2011, LB 703, § 5.
50-1152. Transferred to section 50-1154.
50-1153. Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
50-1154. Legislative districts; change; when operative.

50-1101 Transferred to section 50-1153.

50-1102 Repealed. Laws 2011, LB 703, § 5.

50-1103 Repealed. Laws 2011, LB 703, § 5.

50-1104 Repealed. Laws 2011, LB 703, § 5.

50-1105 Repealed. Laws 2011, LB 703, § 5.

50-1106 Repealed. Laws 2011, LB 703, § 5.

50-1107 Repealed. Laws 2011, LB 703, § 5.

50-1108 Repealed. Laws 2011, LB 703, § 5.

50-1109 Repealed. Laws 2011, LB 703, § 5.

50-1110 Repealed. Laws 2011, LB 703, § 5.

50-1111 Repealed. Laws 2011, LB 703, § 5.

50-1112 Repealed. Laws 2011, LB 703, § 5.

50-1113 Repealed. Laws 2011, LB 703, § 5.

50-1114 Repealed. Laws 2011, LB 703, § 5.

50-1115 Repealed. Laws 2011, LB 703, § 5.

50-1116 Repealed. Laws 2011, LB 703, § 5.

50-1117 Repealed. Laws 2011, LB 703, § 5.

50-1118 Repealed. Laws 2011, LB 703, § 5.

50-1119.01 Repealed. Laws 2011, LB 703, § 5.

50-1120 Repealed. Laws 2011, LB 703, § 5.

50-1121 Repealed. Laws 2011, LB 703, § 5.

50-1122 Repealed. Laws 2011, LB 703, § 5.

- 50-1123 Repealed. Laws 2011, LB 703, § 5.
- 50-1124 Repealed. Laws 2011, LB 703, § 5.
- 50-1125 Repealed. Laws 2011, LB 703, § 5.
- 50-1126 Repealed. Laws 2011, LB 703, § 5.
- 50-1127 Repealed. Laws 2011, LB 703, § 5.
- 50-1128 Repealed. Laws 2011, LB 703, § 5.
- 50-1129 Repealed. Laws 2011, LB 703, § 5.
- 50-1130 Repealed. Laws 2011, LB 703, § 5.
- 50-1131 Repealed. Laws 2011, LB 703, § 5.
- 50-1132 Repealed. Laws 2011, LB 703, § 5.
- 50-1133 Repealed. Laws 2011, LB 703, § 5.
- 50-1134 Repealed. Laws 2011, LB 703, § 5.
- 50-1135 Repealed. Laws 2011, LB 703, § 5.
- 50-1136 Repealed. Laws 2011, LB 703, § 5.
- 50-1137 Repealed. Laws 2011, LB 703, § 5.
- 50-1138 Repealed. Laws 2011, LB 703, § 5.
- 50-1139 Repealed. Laws 2011, LB 703, § 5.
- 50-1140 Repealed. Laws 2011, LB 703, § 5.
- 50-1141.01 Repealed. Laws 2011, LB 703, § 5.
- 50-1142 Repealed. Laws 2011, LB 703, § 5.
- 50-1143 Repealed. Laws 2011, LB 703, § 5.
- 50-1144 Repealed. Laws 2011, LB 703, § 5.
- 50-1145 Repealed. Laws 2011, LB 703, § 5.
- 50-1146 Repealed. Laws 2011, LB 703, § 5.
- 50-1147 Repealed. Laws 2011, LB 703, § 5.
- 50-1148 Repealed. Laws 2011, LB 703, § 5.
- 50-1149 Repealed. Laws 2011, LB 703, § 5.
- 50-1150 Repealed. Laws 2011, LB 703, § 5.
- 50-1152 Transferred to section 50-1154.

50-1153 Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) The State of Nebraska is hereby divided into forty-nine legislative districts. Each district shall be entitled to one member in the Legislature. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

(2) The numbers and boundaries of the legislative districts are designated and established by maps identified and labeled as maps LEG11-1, LEG11-1A, LEG11-43002E-2, LEG11-43002E-2A, LEG11-2B, LEG11-3, LEG11-4, LEG11-5, LEG11-6, LEG11-7, LEG11-8, LEG11-9, LEG11-10, LEG11-11, LEG11-12, LEG11-13, LEG11-14, LEG11-15, LEG11-16, LEG11-17, LEG11-18, LEG11-19, LEG11-20, LEG11-21, LEG11-21A, LEG11-22, LEG11-23, LEG11-24, LEG11-25, LEG11-25A, LEG11-26, LEG11-27, LEG11-28, LEG11-29, LEG11-30, LEG11-30A, LEG11-31, LEG11-32, LEG11-32A, LEG11-33, LEG11-34, LEG11-34A, LEG11-35, LEG11-36, LEG11-37, LEG11-37A, LEG11-38, LEG11-38A, LEG11-39, LEG11-40, LEG11-41, LEG11-42, LEG11-43002E-43, LEG11-44, LEG11-45, LEG11-46, LEG11-43002E-47, LEG11-48, and LEG11-43002E-49, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB703.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of legislative district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the legislative district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the legislative districts.

Source: Laws 1981, LB 406, § 1; R.S.1943, (1987), § 5-201; Laws 1991, LB 614, § 1; Laws 1992, Second Spec. Sess., LB 7, § 1; Laws 2001, LB 852, § 1; R.S.1943, (2010), § 50-1101; Laws 2011, LB703, § 2.

50-1154 Legislative districts; change; when operative.

The changes made to this section and section 50-1153 by Laws 2011, LB703 shall become operative on May 27, 2011, except that members of the Legislature from the odd-numbered districts shall be nominated at the primary election in 2012 and elected at the general election in November 2012 for the term commencing January 9, 2013. The members of the Legislature elected or appointed prior to May 27, 2011, shall represent the newly established districts for the balance of their terms, with each member representing the same numbered district as prior to May 27, 2011.

Source: Laws 1981, LB 406, § 52; R.S.1943, (1987), § 5-252; Laws 1991, LB 614, § 52; Laws 1992, LB 946, § 1; Laws 1992, Second Spec.

Sess., LB 7, § 7; Laws 1992, Second Spec. Sess., LB 15, § 3; Laws 2001, LB 852, § 51; R.S.1943, (2010), § 50-1152; Laws 2011, LB703, § 3.

ARTICLE 12

LEGISLATIVE PERFORMANCE AUDIT ACT

Section

- 50-1202. Legislative findings and declarations; purpose of act.
 50-1203. Terms, defined.
 50-1204. Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.
 50-1205. Committee; duties.
 50-1205.01. Performance audits; standards.
 50-1208. Performance audit; committee; duties; office; duties.
 50-1209. Performance audit; notification of agency.
 50-1210. Report of findings and recommendations; distribution; confidentiality; agency response.
 50-1211. Committee; review materials; reports; public hearing; procedure.
 50-1213. Office; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.
 50-1214. Names not included in documents, when; state employee; immunity.

50-1202 Legislative findings and declarations; purpose of act.

(1) The Legislature hereby finds and declares that pursuant to section 50-402 it is the duty of the Legislative Council to do independent assessments of the performance of state government organizations, programs, activities, and functions in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action.

(2) The purpose of the Legislative Performance Audit Act is to provide for a system of performance audits to be conducted by the office of Legislative Audit as directed by the Legislative Performance Audit Committee.

(3) It is not the purpose of the act to interfere with the duties of the Public Counsel or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogative of any executive state officer, agency, board, bureau, commission, association, society, or institution, except that the act shall not be construed to preclude a performance audit of an agency on the basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogative of the Governor to monitor and report on the performance of the agencies, boards, bureaus, commissions, associations, societies, and institutions under his or her administrative direction.

Source: Laws 1992, LB 988, § 2; Laws 2003, LB 607, § 4; Laws 2013, LB39, § 2.

50-1203 Terms, defined.

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but does not include (a) any court, (b)

the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Office means the office of Legislative Audit;

(9) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(10) Preaudit inquiry means an investigatory process during which the office gathers and examines evidence to determine if a performance audit topic has merit; and

(11) Working papers means those documents containing evidence to support the office's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the office during the performance audit or preaudit inquiry.

Source: Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3; Laws 2013, LB39, § 3.

50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. The committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Auditor shall ensure that performance audit work conducted by the office conforms with performance audit standards contained in the Government Auditing Standards (2011 Revision) as required in section 50-1205.01. The office shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The office shall be the custodian of all records generated by the committee or office except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The office shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The office shall operate under the general direction of the committee.

Source: Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1; Laws 2013, LB39, § 4; Laws 2013, LB40, § 1.

50-1205 Committee; duties.

The committee shall:

(1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;

(2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;

(3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;

(4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;

(5) Respond to inquiries regarding performance audits;

(6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;

(7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;

(8) Administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the office, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it electronically to the Clerk of the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the office and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the office, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the office during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

Source: Laws 1992, LB 988, § 5; Laws 2003, LB 607, § 7; Laws 2006, LB 588, § 3; Laws 2006, LB 956, § 5; Laws 2012, LB782, § 78; Laws 2013, LB39, § 5; Laws 2013, LB222, § 19.

50-1205.01 Performance audits; standards.

Performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2011 Revision), published by the Comptroller General of the United States, Government Accountability Office.

Source: Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2; Laws 2013, LB40, § 2.

50-1208 Performance audit; committee; duties; office; duties.

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the office begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the office shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the office.

(4) After the entrance conference, the office shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit.

The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the office.

(5) Once the committee has adopted a scope statement, the office shall develop an audit plan. The audit plan shall include a description of the research and audit methodologies to be employed and a projected deadline for completion of the office's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

Source: Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8; Laws 2013, LB39, § 6.

50-1209 Performance audit; notification of agency.

Upon approval of an audit plan pursuant to section 50-1208, the agency shall be notified in writing of the specific scope of the audit and the projected deadline for completion of the office's report. If the office needs information from a political subdivision or entity thereof to effectively conduct a performance audit of an agency, the political subdivision or entity thereof shall provide information, on request, to the office.

Source: Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12; Laws 2013, LB39, § 7.

50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.

(1) Upon completion of a performance audit, the office shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the office's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The report submitted to the committee and the Legislative Fiscal Analyst shall be submitted electronically. The committee may, by majority vote, release the office's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the office's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a

description of any significant disagreements the agency has with the office's report or recommendations.

Source: Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9; Laws 2012, LB782, § 79; Laws 2013, LB39, § 8.

50-1211 Committee; review materials; reports; public hearing; procedure.

(1) The committee shall review the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the office's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and any opinions of the Legislative Fiscal Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the committee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the Legislature and to the public. The report submitted to the members of the Legislature shall be submitted electronically. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report.

Source: Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10; Laws 2012, LB782, § 80; Laws 2013, LB39, § 9.

50-1213 Office; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.

(1) The office shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the office is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such informa-

tion and records and, after reasonable accommodations are made, shall grant the office access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Except as provided in this section, any confidential information or confidential records shared with the office shall remain confidential and shall not be shared by an employee of the office with any person who is not an employee of the office, including any member of the committee. If necessary for the conduct of the performance audit, the office may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the office and the agency as to the accuracy of a performance audit or preaudit inquiry involving confidential information or confidential records, the Speaker of the Legislature, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of the performance audit or preaudit inquiry.

(3) Except as provided in subdivision (10)(c) of section 77-27,119, if the speaker or chairperson knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor. Except as provided in subsection (11) of section 77-2711 and subdivision (10)(c) of section 77-27,119, if any employee or former employee of the office knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(4) No proceeding of the committee or opinion or expression of any member of the committee or office employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or office employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the office except in a proceeding brought to enforce the Legislative Performance Audit Act.

(5) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or office shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the office.

Source: Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5; Laws 2013, LB39, § 10.

50-1214 Names not included in documents, when; state employee; immunity.

By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the office or committee.

No employee of the State of Nebraska who provides information to the committee or office shall be subject to any penalties, sanctions, or restrictions

in connection with his or her employment as a result of the provision of such information.

Source: Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6; Laws 2013, LB39, § 11.

ARTICLE 13

REVIEW OF BOARDS AND COMMISSIONS

Section

50-1302. Government, Military and Veterans Affairs Committee; report.

50-1302 Government, Military and Veterans Affairs Committee; report.

(1) Every four years, beginning in 2008, the Government, Military and Veterans Affairs Committee of the Legislature shall prepare and publish a report pertaining to boards, commissions, and similar entities created by law that are made part of or are placed in the executive branch of state government. The committee may also include entities created by executive order or by an agency director. The report shall be submitted electronically to the Legislature on December 1 of such year.

(2) The report shall include, but not be limited to, the following:

(a) The name of each board, commission, or similar entity;

(b) The name of a parent agency, if any;

(c) The statutory citation or other authorization for the creation of the board, commission, or entity;

(d) The number of members of the board, commission, or entity and how the members are appointed;

(e) The qualifications for membership on the board, commission, or entity;

(f) The number of times the board, commission, or entity is required to meet during the year and the number of times it actually met;

(g) Budget information of the board, commission, or entity for the four most recently completed fiscal years; and

(h) A brief summary of the accomplishments of the board, commission, or entity for the past four years.

Source: Laws 1999, LB 298, § 2; Laws 2002, LB 93, § 4; Laws 2005, LB 241, § 1; Laws 2012, LB782, § 81.



CHAPTER 51

LIBRARIES AND MUSEUMS

Article.

2. Public Libraries. 51-211.

ARTICLE 2

PUBLIC LIBRARIES

Section

51-211. Library board; general powers and duties; governing body; duty; discrimination prohibited.

51-211 Library board; general powers and duties; governing body; duty; discrimination prohibited.

(1) The library board may erect, lease, or occupy an appropriate building for the use of a library, appoint a suitable librarian and assistants, fix the compensation of such appointees, and remove such appointees at the pleasure of the board. The governing body of the county, city, or village in which the library is located shall approve any personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the library board.

(2) The library board may establish rules and regulations for the government of such library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. The library board may fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation and fix and impose reasonable fees, not to exceed the library's actual cost, for nonbasic services. The board shall have and exercise such power as may be necessary to carry out the spirit and intent of sections 51-201 to 51-219 in establishing and maintaining a public library and reading room.

(3) The public library shall make its basic services available without charge to all residents of the political subdivision which supplies its tax support.

(4) No service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status.

Source: Laws 1911, c. 73, § 6, p. 316; R.S.1913, § 3797; Laws 1917, c. 86, § 1, p. 223; C.S.1922, § 3190; C.S.1929, § 51-206; R.S.1943, § 51-211; Laws 1990, LB 1236, § 2; Laws 1997, LB 250, § 2; Laws 2012, LB470, § 2.



CHAPTER 52

LIENS

Article.

1. Construction Lien.
(b) Nebraska Construction Lien Act. 52-158.
2. Artisan's Lien. 52-203, 52-204.
5. Thresher's Lien. 52-501, 52-504.
6. Lien for Services Performed Upon Personal Property. 52-603, 52-604.
7. Veterinarian's Lien. 52-701, 52,702.
9. Petroleum Products Lien. 52-903, 52-905.
10. Uniform Federal Lien Registration Act. 52-1004.
11. Fertilizer and Agricultural Chemical Liens. 52-1103, 52-1104.
12. Seed or Electrical Power and Energy Liens. 52-1203, 52-1205.
13. Filing System for Farm Product Security Interests. 52-1313.01.
14. Agricultural Production Liens. 52-1407, 52-1409.
19. Nonconsensual Common-Law Liens. 52-1901 to 52-1907.
20. Homeowners' Association. 52-2001.
21. Commercial Real Estate Broker Lien Act. 52-2101 to 52-2108.
22. Continuation Statements. 52-2201.

ARTICLE 1

CONSTRUCTION LIEN

(b) NEBRASKA CONSTRUCTION LIEN ACT

Section

52-158. Repealed. Laws 2011, LB 3, § 1.

(b) NEBRASKA CONSTRUCTION LIEN ACT

52-158 Repealed. Laws 2011, LB 3, § 1.

ARTICLE 2

ARTISAN'S LIEN

Section

52-203. Lien; effect; priority; limitation; enforcement; fee.

52-204. Lien satisfied; financing statement; termination.

52-203 Lien; effect; priority; limitation; enforcement; fee.

A lien created under section 52-202 is in force from and after the date it is filed and is prior and paramount to all other liens upon such property except those previously filed against such property. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement proceedings shall be instituted within one year after the filing of such lien. The lien is subject to the rights of purchasers of the property against which the lien is filed when the purchasers acquired the property prior to the filing of the lien without knowledge or notice of the rights of the persons performing the work or furnishing material. The fee for filing,

amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-202 regardless of when the lien was created.

Source: Laws 1913, c. 123, § 3, p. 311; R.S.1913, § 3843; C.S.1922, § 3227; C.S.1929, § 52-203; R.S.1943, § 52-203; Laws 1969, c. 436, § 1, p. 1463; Laws 1984, LB 808, § 1; Laws 1998, LB 1321, § 80; Laws 1999, LB 550, § 11; Laws 2001, LB 54, § 2; Laws 2014, LB750, § 2.
Effective date April 11, 2014.

52-204 Lien satisfied; financing statement; termination.

When a lien created under section 52-202 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1988, LB 943, § 2; Laws 1999, LB 550, § 12; Laws 2001, LB 54, § 3; Laws 2014, LB750, § 3.
Effective date April 11, 2014.

ARTICLE 5

THRESHER'S LIEN

Section

- 52-501. Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.
52-504. Lien satisfied; financing statement; termination.

52-501 Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.

(1)(a) The owner or operator of any threshing machine or combine used in threshing, combining, or hulling grain or seed, (b) the owner or operator of any mechanical cornpicker or mechanical cornhusker used in picking or husking corn, and (c) the owner or operator of any cornsheller used in shelling corn shall have and hold a lien upon such grain, seed, or corn which he or she shall thresh, combine, hull, pick, husk, or shell with such machine to secure the payment to him or her of the charges agreed upon by the person for whom the threshing, combining, hulling, picking, husking, or shelling was done or, if no charges are agreed upon, for such charges as may be reasonable for such threshing, combining, hulling, picking, husking, or shelling.

(2) A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the owner or operator claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person for whom the threshing, combining, hulling, picking, husking, or shelling was done, (c) the amount due for such threshing, combining, hulling, picking, husking, or shelling, (d) the amount of grain, seed, or corn covered by the lien, (e) the place where the grain, seed, or corn is located, and (f) the date on which the threshing, combining, hulling, picking, husking, or shelling was done. Such financing statement shall be filed within thirty days after the threshing, combining, hulling, picking, husking, or shelling was done. The failure to include the

social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person for whom the threshing, combining, hulling, picking, husking, or shelling was done.

(3) In the event the person for whom the threshing, combining, hulling, picking, husking, or shelling was done desires to sell or deliver the grain, seed, or corn so threshed, combined, hulled, picked, husked, or shelled to a grain elevator or to any other person, such person desiring to sell or deliver the grain, seed, or corn shall notify the consignee or purchaser that the threshing, combining, hulling, picking, husking, or shelling bill has not been paid, and the lien created under this section on such grain, seed, or corn shall shift to the purchase price thereof in the hands of the purchaser or consignee. In the event the grain, seed, or corn is sold or consigned with the consent or knowledge of the person entitled to a lien created under this section within thirty days after the date of such threshing, combining, hulling, picking, husking, or shelling, such lien shall not attach to the grain, seed, or corn or to the purchase price thereof unless the person entitled to the lien notifies the purchaser in writing of the lien.

(4) A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement shall be instituted within thirty days after the filing of the lien. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(5) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Source: Laws 1923, c. 117, § 1, p. 278; C.S.1929, § 52-501; Laws 1939, c. 83, § 1, p. 266; C.S.Supp.,1941, § 52-501; R.S.1943, § 52-501; Laws 1945, c. 126, § 1, p. 406; Laws 1961, c. 257, § 5, p. 755; Laws 1965, c. 317, § 1, p. 883; Laws 1969, c. 436, § 3, p. 1463; Laws 1984, LB 808, § 2; Laws 1988, LB 943, § 3; Laws 1998, LB 1321, § 81; Laws 1999, LB 550, § 14; Laws 2001, LB 54, § 4; Laws 2014, LB750, § 4.
Effective date April 11, 2014.

52-504 Lien satisfied; financing statement; termination.

When a lien created under section 52-501 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1985, LB 606, § 11; Laws 1988, LB 943, § 4; Laws 1999, LB 550, § 15; Laws 2001, LB 54, § 6; Laws 2014, LB750, § 5.
Effective date April 11, 2014.

ARTICLE 6

LIEN FOR SERVICES PERFORMED UPON PERSONAL PROPERTY

Section

52-603. Lien; how satisfied; sale.

52-604. Sale; proceeds; distribution.

52-603 Lien; how satisfied; sale.

In accordance with the terms of the notice given as provided by section 52-601.01, a sale of the goods for reasonable value may be had to satisfy any valid claim of the claimant for which the claimant has a lien on the goods. Such sale shall extinguish any lien or security interest in the goods of a lienholder or security interest holder to which notice of sale was mailed pursuant to section 52-601.01.

Source: Laws 1923, c. 118, § 3, p. 281; C.S.1929, § 52-603; R.S.1943, § 52-603; Laws 1974, LB 960, § 2; Laws 2014, LB851, § 2.
Operative date July 18, 2014.

52-604 Sale; proceeds; distribution.

From the proceeds of such sale the claimant shall make application in the following order: (1) To satisfy his or her lien, including the reasonable charges of notice, advertisement, and sale; and (2) to satisfy the obligations secured by the lien or security interest of any lienholder or security interest holder of record. The balance, if any, of such proceeds shall be delivered to the county treasurer of the county in which the sale was made. The treasurer of the county in which the property was sold shall issue his or her receipt for the balance of such proceeds. The county treasurer shall make proper entry in the books of his or her office of all such proceeds paid over to him or her, and shall hold the money for a period of five years, and immediately thereafter pay the same into the school fund of the proper county, to be appropriated for the support of the schools, unless the owner of the property sold, his or her legal representatives, or any lienholder or security interest holder of record whose lien or security interest has not previously been satisfied shall, within such period of five years after such proceeds have been deposited with the treasurer, furnish satisfactory evidence of the ownership of such property or satisfactory evidence of the lien or security interest, in which event he, she, or they shall be entitled to receive from the county treasurer the amount so deposited with him or her.

Source: Laws 1923, c. 118, § 4, p. 281; C.S.1929, § 52-604; R.S.1943, § 52-604; Laws 1974, LB 960, § 3; Laws 2005, LB 82, § 1; Laws 2014, LB851, § 3.
Operative date July 18, 2014.

ARTICLE 7**VETERINARIAN'S LIEN**

Section

52-701. Lien; perfection; financing statement; filing; enforcement; fee.

52-702. Lien satisfied; financing statement; termination.

52-701 Lien; perfection; financing statement; filing; enforcement; fee.

Whenever any person procures, contracts with, or hires any person licensed to practice veterinary medicine and surgery to treat, relieve, or in any way take care of any kind of livestock, such veterinarian shall have a first, paramount, and prior lien upon such livestock so treated for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of the services and any medicines or biologics furnished. A lien created under this section shall be treated in all respects as an agricultural lien as provided in

article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within ninety days after the furnishing of the services and any medicines or biologics and shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number of the veterinarian claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person to whom the services and medicines or biologics were furnished, (3) a correct description of the livestock to be charged with the lien, and (4) the amount of the services and any medicines or biologics furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the services and medicines or biologics were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Source: Laws 1935, c. 117, § 1, p. 432; C.S.Supp.,1941, § 52-701; R.S. 1943, § 52-701; Laws 1969, c. 436, § 4, p. 1465; Laws 1984, LB 808, § 3; Laws 1988, LB 943, § 5; Laws 1998, LB 1321, § 82; Laws 1999, LB 550, § 16; Laws 2001, LB 54, § 7; Laws 2014, LB750, § 6.
Effective date April 11, 2014.

52-702 Lien satisfied; financing statement; termination.

When a lien created under section 52-701 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1985, LB 606, § 12; Laws 1988, LB 943, § 6; Laws 1999, LB 550, § 17; Laws 2001, LB 54, § 8; Laws 2014, LB750, § 7.
Effective date April 11, 2014.

ARTICLE 9

PETROLEUM PRODUCTS LIEN

Section

52-903. Lien; effect of filing; sale of crop, effect; enforcement.

52-905. Lien satisfied; financing statement; termination.

52-903 Lien; effect of filing; sale of crop, effect; enforcement.

From and after the date of the filing of the lien as provided in section 52-902, the person claiming the lien shall have a lien upon the crops produced and owned by the person to whom the fuel or lubricant was furnished to the amount of the purchase price of such fuel or lubricant so furnished to such person. In the event the person to whom such fuel or lubricant was furnished desires to sell or deliver any portion of the crops so produced, such person shall notify the purchaser or consignee that such fuel or lubricant bill has not been paid. Such lien shall shift to the purchase price thereof in the hands of such purchaser or consignee. In the event any portion of such crops is sold or

consigned with the consent or knowledge of the person entitled to a lien thereon within six months after the date such fuel or lubricant was furnished, such lien shall not attach to any portion of such crops or to the purchase price thereof unless the person entitled to such lien notifies the purchaser in writing thereof. A lien created under section 52-901 shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement proceedings shall be instituted within ninety days after the filing of the lien. Effective January 1, 2015, this section applies to a lien created under section 52-901 regardless of when the lien was created.

Source: Laws 1957, c. 226, § 3, p. 776; Laws 1969, c. 436, § 5, p. 1465; Laws 1987, LB 314, § 1; Laws 1999, LB 550, § 19; Laws 2001, LB 54, § 11; Laws 2014, LB750, § 8.
Effective date April 11, 2014.

52-905 Lien satisfied; financing statement; termination.

When a lien created under section 52-901 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1985, LB 606, § 13; Laws 1988, LB 943, § 8; Laws 1999, LB 550, § 20; Laws 2001, LB 54, § 13; Laws 2014, LB750, § 9.
Effective date April 11, 2014.

ARTICLE 10

UNIFORM FEDERAL LIEN REGISTRATION ACT

Section

52-1004. Notice; filing; fees; billing.

52-1004 Notice; filing; fees; billing.

(1)(a) This subdivision applies until January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration Act shall be two times the fee required for recording instruments with the register of deeds as provided in section 33-109. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subsection (1) of section 52-1001 shall be the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, the Secretary of State shall remit the fee required for recording instruments with the register of deeds as provided in section 33-109 to the register of deeds of a county for each designation of such county in a filing pursuant to subsection (1) of section 52-1001.

(b) This subdivision applies on and after January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee

for each county more than one designated pursuant to subsection (1) of section 52-1001 shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subsection (1) of section 52-1001.

(2) The Secretary of State shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents presented or filed by them.

Source: Laws 1969, c. 433, § 4, p. 1458; Laws 1984, LB 808, § 5; Laws 1988, LB 933, § 6; Laws 1998, LB 1321, § 86; Laws 1999, LB 550, § 23; Laws 2012, LB14, § 5.

ARTICLE 11

FERTILIZER AND AGRICULTURAL CHEMICAL LIENS

Section

52-1103. Lien; time for filing; date of attachment; enforcement.

52-1104. Lien satisfied; financing statement; termination.

52-1103 Lien; time for filing; date of attachment; enforcement.

In order to be valid against subsequent lienholders, any lien created under section 52-1101 shall be filed within sixty days after the last date upon which the product, machinery, or equipment was furnished or work or labor was performed under the contract, but in no event shall it have priority over prior lienholders unless prior lienholders have agreed to the contract in writing. Such lien shall attach as of the date of filing. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-1101 regardless of when the lien was created.

Source: Laws 1977, LB 218, § 3; Laws 1999, LB 550, § 27; Laws 2001, LB 54, § 16; Laws 2014, LB750, § 10.
Effective date April 11, 2014.

52-1104 Lien satisfied; financing statement; termination.

When a lien created under section 52-1101 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1985, LB 606, § 15; Laws 1988, LB 943, § 10; Laws 1999, LB 550, § 28; Laws 2001, LB 54, § 17; Laws 2014, LB750, § 11.
Effective date April 11, 2014.

ARTICLE 12

SEED OR ELECTRICAL POWER AND ENERGY LIENS

Section

52-1203. Lien; date of attachment; enforcement.

52-1205. Lien satisfied; financing statement; termination.

52-1203 Lien; date of attachment; enforcement.

A lien created under section 52-1201 shall attach on the date of filing and time thereof if shown. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-1201 regardless of when the lien was created.

Source: Laws 1985, LB 503, § 3; Laws 1999, LB 550, § 30; Laws 2001, LB 54, § 20; Laws 2014, LB750, § 12.
Effective date April 11, 2014.

52-1205 Lien satisfied; financing statement; termination.

When a lien created under section 52-1201 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1988, LB 943, § 12; Laws 1999, LB 550, § 31; Laws 2001, LB 54, § 22; Laws 2014, LB750, § 13.
Effective date April 11, 2014.

ARTICLE 13**FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS**

Section

52-1313.01. Effective financing statements; electronic access; fees.

52-1313.01. Effective financing statements; electronic access; fees.

(1) The record of effective financing statements maintained by the Secretary of State may be made available electronically through the portal established under section 84-1204. For batch requests, there shall be a fee of two dollars per requested effective financing statement record accessed through the portal, except that the fee for a batch request for one thousand or more effective financing statements shall be two thousand dollars. Effective financing statement data accessed through the portal shall be for informational purposes only and shall not provide the protection afforded a buyer registered pursuant to section 52-1312.

(2) All fees collected pursuant to this section shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

Source: Laws 1998, LB 924, § 23; Laws 2012, LB719, § 3.

ARTICLE 14**AGRICULTURAL PRODUCTION LIENS**

Section

52-1407. Lien; perfection; financing statement; filing; priority; enforcement; fee.

52-1409. Lien satisfied; financing statement; termination.

52-1407 Lien; perfection; financing statement; filing; priority; enforcement; fee.

(1) An agricultural production input lien shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect

such lien shall contain or have attached thereto the information required in subsection (2) of section 52-1402 and shall be filed within three months after the last date that the agricultural production input was furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. Perfection occurs as of the date such financing statement is filed.

(2) An agricultural production input lien that is not perfected has the priority of an unperfected security interest under section 9-322, Uniform Commercial Code.

(3) An agricultural production input lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. For purposes of enforcement of the lien, the lienholder is the secured party and the person to whom the agricultural production input was furnished is the debtor, and each has the respective rights and duties of a secured party and a debtor under article 9, Uniform Commercial Code.

(4) The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(5) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Source: Laws 1987, LB 101, § 7; Laws 1988, LB 943, § 16; Laws 1999, LB 550, § 32; Laws 2001, LB 54, § 23; Laws 2014, LB750, § 14. Effective date April 11, 2014.

52-1409 Lien satisfied; financing statement; termination.

When an agricultural production input lien is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1987, LB 101, § 9; Laws 1988, LB 943, § 17; Laws 1999, LB 550, § 33; Laws 2001, LB 54, § 24; Laws 2014, LB750, § 15. Effective date April 11, 2014.

ARTICLE 19

NONCONSENSUAL COMMON-LAW LIENS

Section

52-1901. Nonconsensual common-law lien, defined.

52-1902. Transferred to section 52-1907.

52-1905. Nonconsensual common-law lien; how treated.

52-1906. Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.

52-1907. Submission for filing or recording; liability.

52-1901 Nonconsensual common-law lien, defined.

For purposes of sections 52-1901 to 52-1907, nonconsensual common-law lien means a document that purports to assert a lien against real or personal property of any person or entity and:

(1) Is not expressly provided for by a specific state or federal statute;

(2) Does not depend on the consent of the owner of the real or personal property affected; and

(3) Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

Source: Laws 2003, LB 655, § 1; Laws 2013, LB3, § 3.

52-1902 Transferred to section 52-1907.

52-1905 Nonconsensual common-law lien; how treated.

A nonconsensual common-law lien is not binding or enforceable at law or in equity. Any nonconsensual common-law lien that is recorded is void and unenforceable.

Source: Laws 2013, LB3, § 4.

52-1906 Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.

In order that the owner of real property upon which a nonconsensual common-law lien is recorded shall have notice of the recording of the lien, the claimant shall cause the sheriff to serve a copy of the recorded lien upon the owner of the real property upon which the nonconsensual common-law lien is recorded and the sheriff shall make return thereof without delay by filing proof of service with the register of deeds as provided in subsection (1) of section 25-507.01. There shall be no filing fee for filing the proof of service. A judicial proceeding to enforce a nonconsensual common-law lien shall be instituted by the claimant within ten days after recording the lien. Failure to serve a copy of the recorded lien upon the owner or failure to file a judicial proceeding to enforce the lien shall cause the lien to lapse and be of no legal effect.

Source: Laws 2013, LB3, § 5.

52-1907 Submission for filing or recording; liability.

If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of sections 52-1901 and 52-1905 to 52-1907 or section 76-296 and such document is so filed or recorded, the claimant submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

Source: Laws 2003, LB 655, § 2; R.S.1943, (2010), § 52-1902; Laws 2013, LB3, § 6.

ARTICLE 20

HOMEOWNERS' ASSOCIATION

Section

52-2001. Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.

52-2001 Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.

(1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate from the time the assessment becomes due

and a notice containing the dollar amount of such lien is recorded in the office where mortgages or deeds of trust are recorded. The homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate but the homeowners' association shall give reasonable notice of its action to all lienholders of real estate whose interest would be affected. Unless the homeowners' association declaration or agreement otherwise provides, fees, charges, late charges, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(2) A lien under this section is prior to all other liens and encumbrances on real estate except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust on real estate recorded before the notice required under subsection (1) of this section has been recorded for a delinquent assessment for which enforcement is sought, and (c) liens for real estate taxes and other governmental assessments or charges against real estate. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(3) Unless the declaration or agreement otherwise provides, if two or more homeowners' associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(5) This section does not prohibit actions to recover sums for which subsection (1) of this section creates a lien or prohibit a homeowners' association from taking a deed in lieu of foreclosure.

(6) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(7) The homeowners' association, upon written request, shall furnish to a homeowners' association member a recordable statement setting forth the amount of unpaid assessments against his or her real estate. The statement must be furnished within ten business days after receipt of the request and is binding on the homeowners' association, the governing board, and every homeowners' association member.

(8) The homeowners' association declaration, agreements, bylaws, rules, or regulations may not provide that a lien on a member's real estate for any assessment levied against real estate relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice required under subsection (1) of this section.

(9) In the event of a conflict between the provisions of the declaration and the bylaws, rules, or regulations or any other agreement of the homeowners' association, the declaration prevails except to the extent the declaration is inconsistent with this section.

(10)(a) The homeowners' association may require a person who purchases restricted real estate on or after September 6, 2013, to make payments into an escrow account established by the homeowners' association until the balance in

the escrow account for that restricted real estate is in an amount not to exceed six months of assessments.

(b) All payments made under this subsection and received on or after September 6, 2013, shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association, or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the homeowners' association. Upon request by an owner of restricted real estate, the homeowners' association shall disclose the name of the financial institution and the account number where the payments made under this subsection are being held. The homeowners' association may maintain a single escrow account to hold payments made under this subsection from all of the owners of restricted real estate. If a single escrow account is maintained, the homeowners' association shall maintain separate accounting records for each owner of restricted real estate.

(c) The payments made under this subsection may be used by the homeowners' association to satisfy any assessments attributable to an owner of restricted real estate for which assessment payments are delinquent. To the extent that the escrow deposit or any part thereof is applied to offset any unpaid assessments of an owner of restricted real estate, the homeowners' association may require such owner to replenish the escrow deposit.

(d) The homeowners' association shall return the payments made under this subsection, together with any interest earned on such payments, to the owner of restricted real estate when the owner sells the restricted real estate and has fully paid all assessments.

(e) Nothing in this subsection shall prohibit the homeowners' association from establishing escrow deposit requirements in excess of the amounts authorized in this subsection pursuant to provisions in the homeowners' association's declaration.

(11) For purposes of this section:

(a) Declaration means any instruments, however denominated, that create the homeowners' association and any amendments to those instruments;

(b)(i) Homeowners' association means an association whose members consist of a private group of fee simple owners of residential real estate formed for the purpose of imposing and receiving payments, fees, or other charges for:

(A) The use, rental, operation, or maintenance of common elements available to all members and services provided to the member for the benefit of the member or his or her real estate;

(B) Late payments of assessments and, after notice and opportunity to be heard, the levying of fines for violations of homeowners' association declarations, agreements, bylaws, or rules and regulations; or

(C) The preparation and recordation of amendments to declarations, agreements, resale statements, or statements for unpaid assessments; and

(ii) Homeowners' association does not include a co-owners association organized under the Condominium Property Act or a unit owners association organized under the Nebraska Condominium Act; and

(c) Real estate means the real estate of a homeowners' association member as such real estate is specifically described in the member's homeowners' association declaration or agreement.

Source: Laws 2010, LB736, § 1; Laws 2013, LB442, § 1.

Cross References

Condominium Property Act, see section 76-801.

Nebraska Condominium Act, see section 76-825.

ARTICLE 21

COMMERCIAL REAL ESTATE BROKER LIEN ACT

Section

52-2101. Act, how cited.

52-2102. Terms, defined.

52-2103. Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.

52-2104. Notice of lien; mailing of notice required; effect on lien.

52-2105. Notice of lien; contents.

52-2106. Lien; period of enforceability.

52-2107. Priority of liens.

52-2108. Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.

52-2101 Act, how cited.

Sections 52-2101 to 52-2108 shall be known and may be cited as the Commercial Real Estate Broker Lien Act.

Source: Laws 2013, LB3, § 7.

52-2102 Terms, defined.

For purposes of the Commercial Real Estate Broker Lien Act:

(1) Commercial real estate means any real estate other than real estate containing no more than four residential units or real estate on which no buildings or structures are located and that is zoned for single-family residential use. Commercial real estate does not include single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units;

(2) Commission means any and all compensation that may be due a commercial real estate broker for performance of licensed services; and

(3) Commission agreement means a written agreement with a designated commercial real estate broker as required by subsections (2) through (6) of section 76-2422.

Source: Laws 2013, LB3, § 8.

52-2103 Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.

(1)(a) A commercial real estate broker shall have a lien upon commercial real estate or any interest in that commercial real estate that is the subject of a purchase, lease, or other conveyance to a buyer or tenant of an interest in the

commercial real estate in the amount of commissions that the commercial real estate broker is due.

(b) The lien shall be available only to the commercial real estate broker named in a commission agreement signed by an owner or buyer or their respective authorized agents as applicable and is not available to an employee, agent, subagent, or independent contractor of a commercial real estate broker.

(2) A lien under this section shall attach to commercial real estate or any interest in the commercial real estate when:

(a) The commercial real estate broker is entitled to a commission provided in a commission agreement signed by the owner, buyer, or their respective authorized agents, as applicable; and

(b) The commercial real estate broker records a notice of lien in the office of the register of deeds of the county in which the commercial real estate is located, prior to the actual conveyance or transfer of the commercial real estate against which the commercial real estate broker is claiming a lien, except as provided in this section. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(3) In the case of a lease, including a sublease or an assignment of a lease, the notice of lien shall be recorded not later than ninety days after the tenant takes possession of the leased premises. The lien shall attach as of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(4)(a) If a commercial real estate broker is due an additional commission as a result of future actions, including, but not limited to, the exercise of an option to expand the leased premises or to renew or extend a lease pursuant to a commission agreement signed by the then owner, the commercial real estate broker may record its notice of lien at any time after execution of the lease or other commission agreement which contains such option, but not later than ninety days after the event or occurrence on which the future commission is claimed occurs.

(b) In the event that the commercial real estate is sold or otherwise conveyed prior to the date on which a future commission is due, and if the commercial real estate broker has filed a valid notice of lien prior to the sale or other conveyance of the commercial real estate, then the purchaser or transferee shall be deemed to have notice of and shall take title to the commercial real estate subject to the notice of lien. If a commercial real estate broker claiming a future commission fails to record its notice of lien for future commission prior to the recording of a deed conveying legal title to the commercial real estate to the purchaser or transferee, then such commercial real estate broker shall not claim a lien on the commercial real estate. This subsection shall not limit or otherwise affect claims or defenses a commercial real estate broker or owner or any other party may have on any other basis, in law or in equity.

(5) If a commercial real estate broker has a commission agreement as described in subdivision (4)(a) of this section with a prospective buyer, then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the commercial real estate broker in the office of the register of deeds of the county in which the commercial real estate, or any interest in the commercial real estate, is located, within ninety days after the purchase or

other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

Source: Laws 2013, LB3, § 9.

52-2104 Notice of lien; mailing of notice required; effect on lien.

The commercial real estate broker shall, within ten days after recording its notice of lien, either mail a copy of the notice of lien to the owner of record of the commercial real estate by registered or certified mail at the address of the owner stated in the commission agreement on which the claim for lien is based or, if no such address is given, then to the address of the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in a United States mailbox with postage prepaid. The commercial real estate broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the manner required by this section.

Source: Laws 2013, LB3, § 10.

52-2105 Notice of lien; contents.

The notice of lien shall state the name of the commercial real estate broker, the name as reflected in the commercial real estate broker's records of any person the commercial real estate broker believes to be an owner of the commercial real estate on which the lien is claimed, the name as reflected in the commercial real estate broker's records of any person whom the commercial real estate broker believes to be obligated to pay the commission under the commission agreement, a description legally sufficient for identification of the commercial real estate upon which the lien is claimed, and the amount for which the lien is claimed. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signatories. The notice of lien shall be signed by the commercial real estate broker or by a person authorized to sign on behalf of the commercial real estate broker and shall be notarized.

Source: Laws 2013, LB3, § 11.

52-2106 Lien; period of enforceability.

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in section 52-2103 shall continue to be enforceable for two years after the recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, mortgage, or trust deed, or other person having an interest in the commercial real estate gives the commercial real estate broker written demand to institute a judicial proceeding within thirty days, the lien lapses unless, within thirty days after receipt of the written demand, the commercial real estate broker institutes judicial proceedings.

(3) If a judicial proceeding to enforce a lien is instituted while a lien is effective under subsection (1) or (2) of this section, the lien continues during the pendency of the proceeding.

Source: Laws 2013, LB3, § 12.

52-2107 Priority of liens.

(1) Recorded liens, mortgages, trust deeds, and other encumbrances on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date the commercial real estate broker's lien is recorded, shall have priority over the commercial real estate broker's lien.

(2) A construction lien claim that is recorded after the commercial real estate broker's notice of lien but that relates back to a date prior to the recording date of the commercial real estate broker's notice of lien has priority over the commercial real estate broker's lien.

(3) A purchase-money lien executed by the buyer of commercial real estate in connection with a loan for which any part of the proceeds are used to pay the purchase price of the commercial real estate has priority over a commercial real estate broker's lien claimed for the commission owed by the buyer against the commercial real estate purchased by the buyer.

Source: Laws 2013, LB3, § 13.

52-2108 Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.

(1) Whenever a notice of a commercial real estate broker's lien has been recorded, the record owner of the commercial real estate may have the lien released by depositing funds equal to the full amount stated in the notice of lien plus fifteen percent to be applied towards any lien under section 52-2103. These funds shall be held in escrow by such person and by such process which may be agreed to by the parties, either in the commission agreement or otherwise, for the payment to the commercial real estate broker or otherwise for resolution for their dispute or, in the absence of any such mutually agreed person or process, the funds may be deposited with the district court by the filing of an interpleader. Upon such deposit of funds by interpleader, the commercial real estate shall be considered released from such lien or claim of lien. Upon written notice to the commercial real estate broker that the funds have been escrowed or an interpleader filed, the commercial real estate broker shall, within ten business days, record in the office of the register of deeds where the notice of commercial real estate broker's lien was filed pursuant to section 52-2103 a document stating that the lien is released and the commercial real estate released by an escrow established pursuant to this section or by interpleader. If the commercial real estate broker fails to file such document, the person holding the funds may sign and file such document and deduct from the escrow the reasonable cost of preparing and filing the document. Upon the filing of such document, the commercial real estate broker shall be deemed to have an equitable lien on the escrow funds pending a resolution of the commercial real estate broker's claim for payment and the funds shall not be paid to any person, except for such payment to the holder of the funds as set forth in this section, until a resolution of the commercial real estate broker's claim for payment has been agreed to by all necessary parties or ordered by a court having jurisdiction.

(2) Except as otherwise provided in this section, whenever a commercial real estate broker's lien has been recorded and an escrow account is established either from the proceeds from the transaction, conveyance, or any other source of funds computed as one hundred fifteen percent of the amount of the claim

for lien, then the lien against the commercial real estate shall be extinguished and immediately become a lien on the funds contained in the escrow account. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to complete or close the transaction.

Source: Laws 2013, LB3, § 14.

ARTICLE 22 CONTINUATION STATEMENTS

Section

52-2201. Financing statement filed prior to November 1, 2003; loss of perfection; continuation statement; filing required; contents; effect; Secretary of State; duties.

52-2201 Financing statement filed prior to November 1, 2003; loss of perfection; continuation statement; filing required; contents; effect; Secretary of State; duties.

A financing statement filed to perfect a lien pursuant to sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 52-1401 to 52-1411, 54-201, or 54-208, which was properly filed prior to November 1, 2003, shall lose its perfection unless a continuation statement is filed with the Secretary of State after June 30, 2014, and before January 1, 2015. Such continuation statement shall include a statement that the original financing statement is still effective. The filing of a continuation statement shall preserve the priority of the original filing and shall be effective for five years after the date of filing of the continuation statement and may be subsequently continued as provided in article 9, Uniform Commercial Code. Not later than May 31, 2014, the Secretary of State shall notify, by first-class mail, the lienholders of record of the liens described in this section that such a lien shall lose its perfection unless a continuation statement is filed with the Secretary of State as provided in this section.

Source: Laws 2014, LB750, § 1.
Effective date April 11, 2014.



LIQUORS

CHAPTER 53

LIQUORS

Article.

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ARTICLE 1

NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section

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- (c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS
- 53-117. Powers, functions, and duties.
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- 53-122. Sale of liquor by drink; license issuance authorized; exception.
- 53-123. Licenses; types.
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- 53-123.12. Farm winery license; application requirements; renewal; fees.
- 53-123.14. Craft brewery license; rights of licensee.
- 53-123.15. Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action; holder of license; duties; report; contents.
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- 53-124. Licenses; types; classification; fees; where paid; license year.
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- 53-131. Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; renewal; fee.

§ 53-101**LIQUORS**

Section

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- 53-177. Sale at retail; restrictions as to locality.
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- 53-188. Repealed. Laws 2014, LB 863, § 31.
- 53-189. Repealed. Laws 2014, LB 863, § 31.
- 53-190. Premises violating law declared common nuisances.
- 53-191. Repealed. Laws 2014, LB 863, § 31.
- 53-197. Violations; peace officer; duties; neglect of duty; penalty.

(j) PENALTIES

- 53-1,104. Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.

(a) GENERAL PROVISIONS**53-101 Act, how cited.**

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1; Laws 2009, LB232, § 1; Laws 2009, LB355, § 1; Laws 2010, LB258, § 1; Laws 2010, LB861, § 7; Laws 2011, LB407, § 1; Laws 2012, LB824, § 1; Laws 2012, LB1130, § 1.

53-103 Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.43 apply.

Source: Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S. 1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 318, § 2, p. 886; Laws 1965, c. 319, § 1, p. 904; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 183, § 1; Laws 1985, LB 279, § 2; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 154, § 1; Laws 1989, LB 441, § 2; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB 278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2; Laws 2008, LB1103, § 1; Laws 2009, LB137, § 1; Laws 2009, LB355, § 2; Laws 2010, LB788, § 1; Laws 2010, LB861, § 8; Laws 2012, LB824, § 2.

53-103.03 Beer, defined.

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, near beer, and flavored malt beverage.

Source: Laws 2010, LB861, § 11; Laws 2012, LB824, § 3.

53-103.05 Brewpub, defined.

Brewpub means any restaurant or hotel which produces on its premises a maximum of twenty thousand barrels of beer per year.

Source: Laws 2010, LB861, § 13; Laws 2012, LB780, § 1.

53-103.21 Microbrewery, defined.

Microbrewery means any small brewery producing a maximum of twenty thousand barrels of beer per year.

Source: Laws 2010, LB861, § 29; Laws 2012, LB780, § 2.

53-103.38 Spirits, defined.

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution. Spirits includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances. Spirits does not include flavored malt beverages.

Source: Laws 2010, LB861, § 46; Laws 2012, LB824, § 5.

53-103.43 Flavored malt beverage, defined.

Flavored malt beverage means a beer that derives not more than forty-nine percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation, except that in the case of a malt beverage with an alcohol content of more than six percent by volume, not more than one and one-half percent of the volume of the malt beverage may consist of alcohol derived from flavors, flavorings, or other nonbeverage ingredients containing alcohol obtained by distillation.

Source: Laws 2012, LB824, § 4.

(b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

53-110 Commissioners and employees; qualifications; employment by licensee authorized; restrictions.

(1) No person shall be appointed as a commissioner, the executive director of the commission, or an employee of the commission who is not a citizen of the United States and who has not resided within the State of Nebraska successively for two years next preceding the date of his or her appointment.

(2) No person (a) convicted of or who has pleaded guilty to a felony or any violation of any federal or state law concerning the manufacture or sale of alcoholic liquor prior or subsequent to the passage of the Nebraska Liquor Control Act, (b) who has paid a fine or penalty in settlement of any prosecution against him or her for any violation of such laws, or (c) who has forfeited his or her bond to appear in court to answer charges for any such violation shall be appointed commissioner.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, no commissioner or employee of the commission may, directly or indirectly, individually, as a member of a partnership, as a member of a limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor, receive any compensation or profit from such manufacture, sale, or distribution, or have any interest whatsoever in the purchases or sales made by the persons authorized by the act to purchase or to sell alcoholic liquor.

(b) With the written approval of the executive director, an employee of the commission, other than the executive director or a division manager, may accept part-time or seasonal employment with a person licensed or regulated by the commission. No such employment shall be approved if the licensee receives more than fifty percent of the licensee's gross revenue from the sale or dispensing of alcoholic liquor.

(4) This section shall not prevent any commissioner, the executive director, or any employee from purchasing and keeping in his or her possession for the use of himself, herself, or members of his or her family or guests any alcoholic liquor which may be purchased or kept by any person pursuant to the act.

Source: Laws 1935, c. 116, § 11, p. 380; C.S.Supp.,1941, § 53-311; R.S.1943, § 53-110; Laws 1989, LB 780, § 3; Laws 1991, LB 344, § 7; Laws 1993, LB 121, § 318; Laws 2011, LB407, § 2.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-117 Powers, functions, and duties.

The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, nonbeverage users, retailers, railroads including owners and lessees of sleeping, dining, and cafe cars, airlines, and boats in accordance with the Nebraska Liquor Control Act;

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations not inconsistent with federal laws for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in a manner that generally will promote the public health and welfare. All such rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(3) To call upon other administrative departments of the state, county and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as the commission deems necessary in the performance of its duties. The commission shall enter into an agreement with the Nebraska State Patrol in which the Nebraska State Patrol shall hire six new patrol officers and, from the entire Nebraska State Patrol, shall designate a minimum of six patrol officers who will spend a majority of their time in administration and enforcement of the Nebraska Liquor Control Act;

(4) To recommend to local governing bodies rules and regulations not inconsistent with law for the distribution and sale of alcoholic liquor throughout the state;

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

(7) To conduct or cause to be conducted an audit to inspect any licensee's records and books;

(8) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof material for its information in the discharge of its duties under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

Source: Laws 1935, c. 116, § 16, p. 382; C.S.Supp.,1941, § 53-316; R.S.1943, § 53-117; Laws 1959, c. 245, § 1, p. 842; Laws 1965, c. 318, § 4, p. 891; Laws 1967, c. 332, § 1, p. 879; Laws 1974, LB 681, § 4; Laws 1980, LB 848, § 2; Laws 1981, LB 545, § 15; Laws 1988, LB 1089, § 6; Laws 1989, LB 781, § 4; Laws 1991, LB 344, § 11; Laws 1993, LB 183, § 5; Laws 1999, LB 267, § 5; Laws 2004, LB 485, § 6; Laws 2013, LB579, § 1.

53-117.03 Employee and management training; commission; powers and duties; fees; certification.

(1) On or before January 1, 2007, the commission shall adopt and promulgate rules and regulations governing programs which provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. Such rules and regulations may include, but need not be limited to:

(a) Minimum standards governing training of beverage servers, including standards and requirements governing curriculum, program trainers, and certification requirements;

(b) Minimum standards governing training in management of licensed premises, including standards and requirements governing curriculum, program trainers, and certification requirements;

(c) Minimum standards governing the methods allowed for training programs which may include the Internet, interactive video, live training in various locations across the state, and other means deemed appropriate by the commission;

(d) Methods for approving beverage-server training organizations and programs. All beverage-server training programs approved by the commission shall issue a certificate of completion to all persons who successfully complete the program and shall provide the names of all persons completing the program to the commission;

(e) Enrollment fees in an amount determined by the commission to be necessary to cover the administrative costs, including salary and benefits, of enrolling in a training program offered by the commission pursuant to subsection (2) of this section, but not to exceed thirty dollars; and

(f) Procedures and fees for certification, which fees shall be in an amount determined by the commission to be sufficient to defray the administrative costs, including salary and benefits, associated with maintaining a list of persons certified under this section and issuing proof of certification to eligible individuals but shall not exceed twenty dollars.

(2) The commission may create a program to provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. The program shall include training on the issues of sales and service of alcoholic liquor to minors and to visibly inebriated purchasers. The commission may charge each person enrolling in the program an enrollment fee as provided in the rules and regulations, but such fee shall not exceed thirty dollars. All such fees shall be collected by the commission and remitted to the

State Treasurer for credit to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) A person who has completed a training program which complies with the rules and regulations, whether such program is offered by the commission or by another organization, may become certified by the commission upon the commission receiving evidence that he or she has completed such program and the person seeking certification paying the certification fee established under this section.

Source: Laws 2006, LB 845, § 3; Laws 2013, LB199, § 22.

53-117.06 Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.

Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any administrative costs, including salary and benefits, incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Liquor Control Commission Rule and Regulation Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 70, § 4; Laws 1989, LB 781, § 18; Laws 1993, LB 183, § 7; Laws 1993, LB 332, § 6; Laws 1994, LB 1066, § 42; Laws 2008, LB993, § 1; Laws 2009, First Spec. Sess., LB3, § 28; Laws 2013, LB199, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(d) LICENSES; ISSUANCE AND REVOCATION

53-121 Repealed. Laws 2014, LB 863, § 31.

53-122 Sale of liquor by drink; license issuance authorized; exception.

The commission may issue licenses for the sale of alcoholic liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska Liquor Control Act in all cities and villages in this state, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

Source: Laws 1935, c. 116, § 48, p. 403; C.S.Supp.,1941, § 53-348; R.S.1943, § 53-122; Laws 1963, c. 309, § 1, p. 911; Laws 1963, c. 310, § 2, p. 923; Laws 1969, c. 439, § 1, p. 1469; Laws 1973, LB 556, § 1; Laws 1977, LB 40, § 311; Laws 1984, LB 920, § 43; Laws 1988, LB 1089, § 7; Laws 1989, LB 781, § 5; Laws 1991, LB 344, § 15; Laws 1993, LB 183, § 8; Laws 1994, LB 76, § 570;

Laws 1999, LB 267, § 6; Laws 2001, LB 278, § 2; Laws 2004, LB 485, § 8; Laws 2005, LB 98, § 34; Laws 2010, LB861, § 51; Laws 2014, LB863, § 23.

Effective date April 10, 2014.

53-123 Licenses; types.

Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; (14) microdistillery license; and (15) entertainment district license.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c. 332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5; Laws 2012, LB1130, § 2.

53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.

(1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the retail license, on the premises specified in the retail license or the entertainment district license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(4), p. 617; Laws 1947, c. 188, § 1(4), p. 622; Laws 1965, c. 318, § 5, p. 892; Laws 1973, LB 111, § 3; Laws 1978, LB 386, § 3; Laws 1988, LB 1089, § 9; Laws 1989, LB 154, § 2; Laws 1989, LB 441, § 3; Laws 1991, LB 344, § 20; Laws 1993, LB 53, § 2; Laws 1994, LB 859, § 4; Laws 2001, LB 278, § 3; Laws 2004, LB 485, § 12; Laws 2006, LB 562, § 2; Laws 2012, LB1130, § 3.

53-123.12 Farm winery license; application requirements; renewal; fees.

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall include with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of receipt by mail or electronic delivery of such application from the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

Source: Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53; Laws 2011, LB407, § 3.

53-123.14 Craft brewery license; rights of licensee.

Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit a brewpub or microbrewery to produce on the craft brewery premises a maximum of twenty thousand barrels of beer per year. A craft brewery may

also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the craft brewery licensee, wine, or alcoholic liquor by the drink for consumption on the craft brewery premises shall require the appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17.

Source: Laws 1988, LB 1089, § 3; Laws 1991, LB 344, § 25; Laws 1994, LB 1292, § 3; Laws 1996, LB 750, § 5; Laws 2012, LB780, § 3; Laws 2012, LB1130, § 4.

53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action; holder of license; duties; report; contents.

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any manufacturer who sells and ships alcoholic liquor from another state directly to a consumer in this state if the manufacturer satisfies the requirements of subsections (7) through (9) of this section. A manufacturer who receives a license pursuant to this

subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacture direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The commission may issue a shipping license to any retailer who is licensed within or outside Nebraska, who is authorized to sell alcoholic liquor at retail in the state of domicile of the retailer, and who is not a manufacturer if such retailer satisfies the requirements of subsections (7) through (9) of this section to ship alcoholic liquor from another state directly to a consumer in this state. A retailer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a retail direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(6) The application for a shipping license under subsection (2) or (3) of this section shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine.

(7) The application for a shipping license under subsection (4) or (5) of this section shall be in such form as the commission prescribes. The application shall require an applicant which is a manufacturer, a craft brewery, a craft distillery, or a farm winery to identify the brands of alcoholic liquor that the applicant is requesting the authority to ship either into or within Nebraska. For all applicants, unless otherwise provided in this section, the application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers or retailers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and

examinations made by duly authorized employees of the commission if within the United States;

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers or retailers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine;

(d) That the applicant agrees to notify the commission of any violations in the state in which he or she is domiciled and any violations of the direct shipping laws of any other states. Failure to notify the commission within thirty days after such a violation may result in a hearing before the commission pursuant to which the license may be suspended, canceled, or revoked; and

(e) That the applicant, if a manufacturer, craft brewery, craft distillery, or farm winery, agrees to notify any wholesaler licensed in Nebraska that has been authorized to distribute such brands that the application has been filed for a shipping license. The notice shall be in writing and in a form prescribed by the commission. The commission may adopt and promulgate rules and regulations as it reasonably deems necessary to implement this subdivision, including rules and regulations that permit the holder of a shipping license under this subdivision to amend the shipping license by, among other things, adding or deleting any brands of alcoholic liquor identified in the shipping license.

(8) Any manufacturer or retailer who is granted a shipping license under subsection (4) or (5) of this section shall:

(a) Only ship the brands of alcoholic liquor identified on the application;

(b) Only ship alcoholic liquor that is owned by the holder of the shipping license;

(c) Only ship alcoholic liquor that is properly registered with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury;

(d) Not ship any alcoholic liquor products that the manufacturers or wholesalers licensed in Nebraska have voluntarily agreed not to bring into Nebraska at the request of the commission;

(e) Not ship more than nine liters of alcoholic liquor per month to any person in Nebraska to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale; and

(f) Cause the direct shipment of alcoholic liquor to be by approved common carrier only. The commission shall adopt and promulgate rules and regulations pursuant to which common carriers may apply for approval to provide common carriage of alcoholic liquor shipped by a holder of a shipping license issued pursuant to subsection (4) or (5) of this section. The rules and regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he or she is at least twenty-one years of age, (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the commission, and (iii) the commission-approved common carrier to submit to the commission such information as the commission may prescribe. The commission-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of twenty-one years and refuses to present valid identification. All holders of shipping licenses shipping alcoholic liquor pursuant to this subdivision shall affix a conspicuous

notice in sixteen-point type or larger to the outside of each package of alcoholic liquor shipped within or into the State of Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the holder of the shipping license shall be liable only for their independent acts.

(9) For purposes of sections 53-160, 77-2703, and 77-27,142, each shipment of alcoholic liquor by the holder of a shipping license under subsection (3), (4), or (5) of this section shall constitute a sale in Nebraska by establishing a nexus in the state. The holder of the shipping license shall collect all the taxes due to the State of Nebraska and any political subdivision and remit any excise taxes monthly to the commission and any sales taxes to the Department of Revenue.

(10) By July 1, 2014, the commission shall report to the General Affairs Committee of the Legislature the number of shipping licenses issued for license years 2013-14 and 2014-15. The report shall be made electronically.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1; Laws 2011, LB286, § 1; Laws 2013, LB230, § 1.

53-123.16 Microdistillery license; rights of licensee.

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Source: Laws 2007, LB549, § 6; Laws 2012, LB1130, § 5.

53-123.17 Entertainment district license; rights of licensee; application; fee; commission; duties; occupation tax; local governing body; powers.

(1) A local governing body may designate an entertainment district in which a commons area may be used by retail, craft brewery, and microdistillery licensees which obtain an entertainment district license. The local governing

body may, at any time, revoke such designation if it finds that the commons area threatens the health, safety, or welfare of the public or has become a common nuisance. The local governing body shall file the designation or the revocation of the designation with the commission.

(2) An entertainment district license allows the sale of alcoholic liquor for consumption on the premises within the confines of a commons area. The consumption of alcoholic liquor in the commons area shall only occur during the hours authorized for sale of alcoholic liquor for consumption on the premises under section 53-179 and while food service is available in the commons area. Only the holder of an entertainment district license or employees of such licensee may sell or dispense alcoholic liquor in the commons area.

(3) An entertainment district licensee shall serve alcoholic liquor to be consumed in the commons area in containers that prominently displays the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's retail license, craft brewery license, or microdistillery license. An entertainment district licensee may allow alcohol sold by another entertainment district licensee to enter the licensed premises of either licensee. No entertainment district licensee shall allow alcoholic liquor to leave the commons area or the premises licensed under its retail license, craft brewery license, or microdistillery license.

(4) If the licensed premises of the holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, or a microdistillery license is adjacent to a commons area in an entertainment district designated by a local governing body pursuant to this section, the holder of the license may obtain an annual entertainment district license as prescribed in this section. The entertainment district license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, or microdistillery license.

(5) In order to obtain an entertainment district license, a person eligible under subsection (4) of this section shall:

(a) File an application with the commission upon such forms as the commission prescribes; and

(b) Pay an additional license fee of three hundred dollars for the privilege of serving alcohol in the entertainment district payable to the clerk of the local governing body in the same manner as license fees under subdivision (4) of section 53-134.

(6) When an application for an entertainment district license is filed, the commission shall notify the clerk of the local governing body. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(7) The local governing body may impose an occupation tax on the business of an entertainment district licensee doing business within the liquor license jurisdiction of the local governing body as provided in subdivision (11)(b) of this section in accordance with section 53-132.

(8) The local governing body with respect to entertainment district licenses within its liquor license jurisdiction as provided in subdivision (11)(b) of this section may cancel an entertainment district license for cause for the remainder of the period for which such entertainment district license is issued. Any person

whose entertainment district license is canceled may appeal to the commission in accordance with section 53-134.

(9) A local governing body may regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, any area it designates as an entertainment district.

(10) Violation of any provision of this section or any rules or regulations adopted and promulgated pursuant to this section by an entertainment district licensee may be cause to revoke, cancel, or suspend the retail license issued under subsection (6) of section 53-124, craft brewery license, or microdistillery license held by such licensee.

(11) For purposes of this section:

(a) Commons area means an area:

- (i) Within an entertainment district designated by a local governing body;
- (ii) Shared by authorized licensees with entertainment district licenses;
- (iii) Abutting the licensed premises of such licensees;
- (iv) Having limited pedestrian accessibility by use of a physical barrier, either on a permanent or temporary basis; and
- (v) Closed to vehicular traffic when used as a commons area.

Commons area may include any area of a public or private right-of-way if the area otherwise meets the requirements of this section; and

(b) Local governing body means the governing body of the city or village in which the entertainment district licensee is located.

Source: Laws 2012, LB1130, § 6.

53-124 Licenses; types; classification; fees; where paid; license year.

(1) At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in section 53-124.01 and, if the applicant is an individual, provide the applicant's social security number. The commission shall issue the types of licenses described in this section.

(2) There shall be an airline license, a boat license, and a railroad license. The commission shall charge one dollar for each duplicate of an airline license or a railroad license.

(3)(a) There shall be a manufacturer's license for alcohol and spirits, for beer, and for wine. The annual fee for a manufacturer's license for beer shall be based on the barrel daily capacity as follows:

- (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;
- (ii) 100 to 150 barrel daily capacity, tier two;
- (iii) 150 to 200 barrel daily capacity, tier three;
- (iv) 200 to 300 barrel daily capacity, tier four;
- (v) 300 to 400 barrel daily capacity, tier five;
- (vi) 400 to 500 barrel daily capacity, tier six;
- (vii) 500 barrel daily capacity, or more, tier seven.

(b) For purposes of this subsection, daily capacity means the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars.

(4) There shall be five classes of nonbeverage users' licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

(5) In lieu of a manufacturer's, a retailer's, or a wholesaler's license, there shall be a license to operate issued for a craft brewery, a farm winery, or a microdistillery.

(6)(a) There shall be five classes of retail licenses:

(i) Class A: Beer only, for consumption on the premises;

(ii) Class B: Beer only, for consumption off the premises, sales in the original packages only;

(iii) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(iv) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subsection (2) of section 53-123.04; and

(v) Class I: Alcoholic liquor, for consumption on the premises.

(b) All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(7) There shall be four types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, manufacture direct sales, and retail direct sales.

(8) There shall be two types of wholesale licenses: Alcoholic liquor and beer only. The annual fee shall be paid for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling the same product.

(9) The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in section 53-124.01, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

Source: Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws

1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 53, § 3; Laws 1993, LB 183, § 9; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7; Laws 2009, LB355, § 3; Laws 2010, LB861, § 56; Laws 2010, LB867, § 2; Laws 2013, LB230, § 2.

53-124.01 Fees for annual licenses.

(1) The fees for annual licenses finally issued by the commission shall be as provided in this section and section 53-124.

(2) Airline license \$100

(3) Boat license \$50

(4) Manufacturer’s license:

| Class | Fee - In Dollars |
|---------------------|------------------|
| Alcohol and spirits | 1,000 |
| Beer - tier one | 100 |
| Beer - tier two | 200 |
| Beer - tier three | 350 |
| Beer - tier four | 500 |
| Beer - tier five | 650 |
| Beer - tier six | 700 |
| Beer - tier seven | 800 |
| Wine | 250 |

(5) Nonbeverage user’s license:

| Class | Fee - In Dollars |
|---------|------------------|
| Class 1 | 5 |
| Class 2 | 25 |
| Class 3 | 50 |
| Class 4 | 100 |
| Class 5 | 250 |

(6) Operator’s license:

| Class | Fee - In Dollars |
|-----------------|------------------|
| Craft brewery | 250 |
| Farm winery | 250 |
| Microdistillery | 250 |

(7) Railroad license \$100

(8) Retail license:

| Class | Fee - In Dollars |
|---------|------------------|
| Class A | 100 |
| Class B | 100 |
| Class C | 300 |
| Class D | 200 |
| Class I | 250 |

(9) Shipping license:

| Class | Fee - In Dollars |
|--------------------------|------------------|
| Manufacturer | 1,000 |
| Vintage wines | 1,000 |
| Manufacture direct sales | 500 |
| Retail direct sales | 500 |

(10) Wholesale license:

| Class | Fee - In Dollars |
|------------------|------------------|
| Alcoholic liquor | 750 |
| Beer | 500 |

Source: Laws 2010, LB861, § 57; Laws 2013, LB230, § 3.

53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.

(1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or farm winery license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify the clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the

local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Source: Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9; Laws 2010, LB861, § 59; Laws 2011, LB407, § 4.

53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; renewal; fee.

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes, including the information required by subsection (3) of this section for an application to operate a cigar bar;

(b) The license fee if under sections 53-124 and 53-124.01 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The nonrefundable application fee in the sum of four hundred dollars, except that the nonrefundable application fee for an application for a cigar bar shall be one thousand dollars.

(2) The commission shall notify the clerk of the city or village in which such license is sought or, if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall include one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receipt by mail or electronic delivery of such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

(3) For an application to operate a cigar bar, the application shall include proof of the cigar bar's annual gross revenue as requested by the commission and such other information as requested by the commission to establish the intent to operate as a cigar bar. The commission may adopt and promulgate rules and regulations to regulate cigar bars.

(4) For renewal of a license under this section, a licensee shall file with the commission an application, the license fee as provided in subdivision (1)(b) of this section, and a renewal fee of forty-five dollars.

Source: Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8;

Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4; Laws 2010, LB861, § 65; Laws 2011, LB407, § 5.

53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.

(1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued;

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license; or

(d) An indication on the application that the location of a proposed retail establishment is within one hundred fifty feet of a church as described in subsection (2) of section 53-177.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed or electronically delivered to the applicant, the local governing body, each individual protesting a license pursuant to subdivision (1)(b) of this section, and any church affected as described in subdivision (1)(d) of this section, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing or electronic delivery to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application. The commission shall not use electronic delivery with respect to an applicant, a protestor, or a church under this section without the consent of the recipient to electronic delivery.

Source: Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13; Laws 2010, LB861, § 67; Laws 2011, LB407, § 6.

53-134 Retail, craft brewery, microdistillery, and entertainment district licenses; city and village governing bodies; county boards; powers, functions, and duties.

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, microdistillery, and entertainment district licenses:

(1) To cancel or revoke for cause retail, craft brewery, microdistillery, or entertainment district licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the executive director of the commission (a) within thirty days after determining that such violation has occurred, (b) within thirty days after the conclusion of an ongoing police investigation, or (c) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and entertainment district license fees as provided in section 53-123.17 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, microdistillery licensee, or entertainment district licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promul-

gated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Source: Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 352, § 92; Laws 1988, LB 550, § 3; Laws 1988, LB 1089, § 15; Laws 1989, LB 780, § 10; Laws 1989, LB 781, § 12; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14; Laws 2010, LB861, § 68; Laws 2011, LB641, § 1; Laws 2012, LB1130, § 7.

(f) TAX

53-160 Tax on manufacturer and wholesaler; amount; exemption; duties of commission.

(1) For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of thirty-one cents per gallon on all beer; ninety-five cents per gallon for wine, except for wines produced and released from bond in farm wineries; six cents per gallon for wine produced and released from bond in farm wineries; and three dollars and seventy-five cents per gallon on alcohol and spirits manufactured and sold by such manufacturer or shipped for sale in this state by such wholesaler in the course of such business. The gallonage tax imposed by this subsection shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of alcoholic liquor shall be exempt from the payment of the gallonage tax on such alcoholic liquor upon satisfactory proof,

including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such alcoholic liquor was manufactured in this state but shipped out of the state for sale and consumption outside this state.

(3) Dry wines or fortified wines manufactured or shipped into this state solely and exclusively for sacramental purposes and uses shall not be subject to the gallonage tax.

(4) The gallonage tax shall not be imposed upon any alcoholic liquor, whether manufactured in or shipped into this state, when sold to a licensed nonbeverage user for use in the manufacture of any of the following when such products are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, food products, and confections or candy; scientific, industrial, and chemical products, except denatured alcohol; or products for scientific, chemical, experimental, or mechanical purposes.

(5) The gallonage tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The gallonage tax shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(7) The commission shall collect the gallonage tax and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any alcoholic liquor manufactured in or shipped into this state is sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or wholesaler shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under the Nebraska Liquor Control Act. The net proceeds of all revenue arising under this section shall be credited to the General Fund.

Source: Laws 1935, c. 116, § 50, p. 405; Laws 1939, c. 66, § 1, p. 273; Laws 1941, c. 106, § 1, p. 426; C.S.Supp., 1941, § 53-350; R.S. 1943, § 53-160; Laws 1947, c. 189, § 1, p. 624; Laws 1951, c. 172, § 1, p. 660; Laws 1963, c. 312, § 1, p. 940; Laws 1965, c. 320, § 1, p. 911; Laws 1965, c. 319, § 3, p. 909; Laws 1965, c. 318, § 9, p. 898; Laws 1972, LB 66, § 3; Laws 1977, LB 254, § 1; Laws 1977, LB 220, § 1; Laws 1979, LB 260, § 1; Laws 1981, LB 129, § 1; Laws 1985, LB 279, § 9; Laws 1985, LB 280, § 1; Laws 1988, LB 901, § 3; Laws 1988, LB 1089, § 22; Laws 1991, LB 344, § 44; Laws 2003, LB 283, § 1; Laws 2003, LB 759, § 1; Laws 2012, LB824, § 6.

53-162 Alcoholic liquor shipped from another state; tax imposed.

For the purpose of raising revenue, a tax is imposed upon persons holding a shipping license issued pursuant to subsection (4) or (5) of section 53-123.15 who ship alcoholic liquor to individuals pursuant to section 53-192 and for which the required taxes in the state of purchase or this state have not been paid. The tax, if due, shall be paid by the holder of the shipping license issued pursuant to subsection (4) or (5) of section 53-123.15. The amount of the tax

shall be imposed as provided in section 53-160. The tax shall be collected by the commission, except that the tax shall not be due until December 31 of the year in which the purchase was made. The tax shall be delinquent if unpaid within twenty-five days after December 31. The revenue from the tax shall be credited to the General Fund. The commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 973, § 2; Laws 2001, LB 671, § 3; Laws 2013, LB230, § 4.

53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.

Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c)(i) Except as provided in subdivision (ii) of this subdivision, farm winery producers which paid less than one thousand dollars of excise taxes pursuant to section 53-160 for the previous calendar year and which will pay less than one thousand dollars of excise taxes pursuant to section 53-160 for the current calendar year shall, on or before the twenty-fifth day of the calendar month following the end of the year in which wine was packaged and released from bond, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged and released from bond by such producer during the preceding calendar year; and

(ii) Farm winery producers which paid one thousand dollars or more of excise taxes pursuant to section 53-160 for the previous calendar year or which become liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged and released from bond, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged and released from bond by such producer during the preceding calendar month. A farm winery producer which becomes liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall also pay such excise taxes immediately;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was released from bond for sale,

submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was released from bond for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under sections 53-124 and 53-124.01, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

Source: Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws 1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16; Laws 2010, LB861, § 73; Laws 2012, LB824, § 7.

(i) PROHIBITED ACTS

53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions; exception.

(1)(a) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03.

(b) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of a wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03 is located, established, conducted, or operated in whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

(2) A manufacturer of beer may acquire an ownership interest in a beer wholesaler, for a period not to exceed two years, upon the death or bankruptcy of the beer wholesaler with which the manufacturer is doing business or upon the beer wholesaler with which the manufacturer is doing business becoming ineligible to hold a license under section 53-125.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953,

c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3; Laws 2010, LB861, § 74; Laws 2011, LB279, § 1.

53-177 Sale at retail; restrictions as to locality.

(1) Except as otherwise provided in subsection (2) of this section, no license shall be issued for the sale at retail of any alcoholic liquor within one hundred fifty feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. This prohibition does not apply (a) to any location within such distance of one hundred fifty feet for which a license to sell alcoholic liquor at retail has been granted by the commission for two years continuously prior to making of application for license, (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935, or (c) to a college or university in the state which is subject to section 53-177.01.

(2) If a proposed location for the sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in section 53-133.

Source: Laws 1935, c. 116, § 35, p. 399; C.S.Supp.,1941, § 53-335; R.S.1943, § 53-177; Laws 1947, c. 189, § 2, p. 626; Laws 1965, c. 322, § 1, p. 914; Laws 1999, LB 267, § 13; Laws 2009, LB232, § 3; Laws 2010, LB861, § 76; Laws 2011, LB407, § 7.

53-177.01 Sale for consumption on premises near campus of college or university; restrictions; commission; waiver; application; contents; written approval of governing body of college or university.

(1) No alcoholic liquor shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

(2) Except as otherwise provided in subsection (4) of this section, the commission may waive the three-hundred-foot restriction in subsection (1) of this section taking into consideration one or more of the following:

(a) The impact of retail sales of alcoholic liquor for consumption on the premises on the academic mission of the college or university;

(b) The impact on students and prospective students if such sales were permitted on or near campus;

(c) The impact on economic development opportunities located within or in proximity to the campus; and

(d) The waiver would likely reduce the number of applications for special designated licenses requested by the college or university or its designee.

(3) To apply for a waiver under this section, the applicant shall submit a written application to the commission. The commission shall notify the governing body of the affected college or university when the commission receives an application for a waiver. The application shall include:

(a) The address of the location for which the waiver is requested;

(b) The name and type of business for which the waiver is requested; and

(c) A description of the justification for the waiver explaining how the proposed location complies with the findings prescribed in subsection (2) of this section.

(4) The commission shall not waive the three-hundred-foot restriction in subsection (1) of this section without written approval from the governing body of the college or university or its designee if the physical location of the property which is the subject of the requested waiver is (a) surrounded by property owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university or (b) adjacent to property on two or more sides owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university.

Source: Laws 2011, LB407, § 8.

53-179 Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.

(1) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m., except that the local governing body of any city or village with respect to area inside the corporate limits of such city or village, or the county board with respect to area outside the corporate limits of any city or village, may by ordinance or resolution (a) require closing prior to 1 a.m. on any day, (b) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day, (c) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day, or (d) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, and permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day.

(2) Except as provided for and allowed by ordinance of a local governing body applicable to area inside the corporate limits of a city or village or by resolution of a county board applicable to area inside such county and outside the corporate limits of any city or village, no alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6 a.m. Sunday and 1 a.m. Monday. This subsection shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(3) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of fifteen minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

(4) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

Source: Laws 1935, c. 116, § 37, p. 399; Laws 1941, c. 107, § 1, p. 429; C.S.Supp.,1941, § 53-337; R.S.1943, § 53-179; Laws 1955, c. 202, § 2, p. 579; Laws 1957, c. 232, § 1, p. 791; Laws 1963, c. 310, § 12, p. 934; Laws 1963, Spec. Sess., c. 5, § 4, p. 82; Laws 1965, c. 318, § 10, p. 900; Laws 1967, c. 336, § 2, p. 902; Laws 1974, LB 681, § 7; Laws 1976, LB 204, § 6; Laws 1978, LB 386, § 8; Laws 1979, LB 514, § 1; Laws 1981, LB 217, § 1; Laws 1983, LB 213, § 19; Laws 1991, LB 344, § 61; Laws 1991, LB 354, § 1; Laws 2004, LB 485, § 29; Laws 2010, LB861, § 77; Laws 2012, LB861, § 1; Laws 2014, LB863, § 24.

Effective date April 10, 2014.

53-180 Prohibited acts relating to minors and incompetents.

No person shall sell, furnish, give away, exchange, or deliver, or permit the sale, gift, or procuring of, any alcoholic liquors to or for any minor or to any person who is mentally incompetent.

Source: Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(1), p. 664; Laws 1980, LB 848, § 17; Laws 2011, LB667, § 21.

Cross References

City of the second class may prohibit sale to minors, see section 17-135.

Minor Alcoholic Liquor Liability Act, see section 53-401.

53-180.05 Prohibited acts relating to minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.

(1) Except as provided in subsection (2) of this section, any person who violates section 53-180 shall be guilty of a Class I misdemeanor.

(2) Any person who knowingly and intentionally violates section 53-180 shall be guilty of a Class IIIA felony and serve a mandatory minimum of at least thirty days' imprisonment as part of any sentence he or she receives if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

(3) Any person who violates any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

(4) Any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor.

(5) Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(6) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(7) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (6) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

Source: Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(6), p. 664; Laws 1963, c. 313, § 2, p. 943; Laws 1969, c. 444, § 1, p. 1482; Laws 1973, LB 25, § 3; Laws 1977, LB 40, § 315; Laws 1982, LB 869, § 1; Laws 1984, LB 56, § 4; Laws 1985, LB 493, § 2; Laws 1989, LB 440, § 1; Laws 1991, LB 454, § 1; Laws 2001, LB 114, § 6; Laws 2010, LB258, § 2; Laws 2011, LB667, § 22.

53-180.06 Documentary proof of age; separate book; record; contents.

(1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, state identification card, military identification card, alien registration card, or passport.

(2) Every holder of a retail license may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

Source: Laws 1969, c. 437, § 1, p. 1467; Laws 1991, LB 454, § 2; Laws 1999, LB 267, § 14; Laws 2013, LB173, § 1.

53-183 Sale on credit or for goods or services forbidden; exceptions.

(1) No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law.

(2) Nothing in this section shall prevent:

(a) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club;

(b) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(c) Any licensed retailer engaged in the sale of wine or distilled spirits from issuing tasting cards to customers.

Source: Laws 1935, c. 116, § 40, p. 401; C.S.Supp.,1941, § 53-340; R.S.1943, § 53-183; Laws 1959, c. 252, § 1, p. 883; Laws 1978, LB 386, § 10; Laws 1991, LB 344, § 64; Laws 2011, LB314, § 1; Laws 2014, LB863, § 25.
Effective date April 10, 2014.

53-186 Consumption of liquor on public property; forbidden; exceptions; license authorized.

(1) Except as provided in subsection (2) of this section or section 60-6,211.08, it shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 44, p. 402; C.S.Supp.,1941, § 53-344; R.S.1943, § 53-186; Laws 1953, c. 182, § 5, p. 576; Laws 1967, c. 332, § 12, p. 891; Laws 1993, LB 235, § 45; Laws 1999, LB 585, § 1; Laws 2011, LB281, § 1.

53-186.01 Consumption of liquor in public places; license required; exceptions; violations; penalty.

(1) It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages or to limousines or buses operated under section 60-6,211.08.

(4) Any person violating subsection (1) of this section shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

(5) Any person violating subsection (2) of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1965, c. 318, § 1, p. 885; Laws 1978, LB 386, § 11; Laws 1991, LB 344, § 67; Laws 1991, LB 454, § 3; Laws 2011, LB281, § 2.

53-188 Repealed. Laws 2014, LB 863, § 31.

53-189 Repealed. Laws 2014, LB 863, § 31.

53-190 Premises violating law declared common nuisances.

All places where alcoholic liquor is sold or consumed in violation of any provision of section 53-186.01 shall be taken and held and are declared to be common nuisances and may be abated as such in the manner provided in the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 61, p. 409; C.S.Supp.,1941, § 53-361; R.S.1943, § 53-190; Laws 1965, c. 318, § 11, p. 901; Laws 2014, LB863, § 26.

Effective date April 10, 2014.

53-191 Repealed. Laws 2014, LB 863, § 31.

53-197 Violations; peace officer; duties; neglect of duty; penalty.

(1) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall make complaint against the person so offending within their respective jurisdictions to the proper court, and for every neglect or refusal so to do, every such officer shall be guilty of a Class V misdemeanor.

(2) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall report such offense in writing to the executive director of the commission (a) within thirty days after such offense is committed, (b) within thirty days after such sheriff, deputy sheriff, police officer, marshal, or deputy marshal is informed of such offense, (c) within thirty days after the conclusion of an ongoing police investigation, or (d) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

Source: Laws 1935, c. 116, § 75, p. 412; C.S.Supp.,1941, § 53-375; R.S.1943, § 53-197; Laws 1972, LB 1032, § 257; Laws 1977, LB 40, § 318; Laws 1988, LB 1030, § 44; Laws 2011, LB641, § 2.

(j) PENALTIES

53-1,104 Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.

(1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in

subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02;

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. The commission shall remit all funds collected under this section to the State Treasurer for

distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) Recognizing that suspension of the license of a licensee domiciled outside of the state poses unique enforcement difficulties, the commission may, at its discretion, mandate that a licensee domiciled outside of the state pay the cash penalty found in subsection (2) of this section rather than serve the suspension.

Source: Laws 1935, c. 116, § 105, p. 429; C.S.Supp.,1941, § 53-3,105; R.S.1943, § 53-1,104; Laws 1977, LB 40, § 320; Laws 1980, LB 848, § 20; Laws 1991, LB 344, § 71; Laws 1991, LB 586, § 2; Laws 1999, LB 267, § 15; Laws 2000, LB 973, § 9; Laws 2003, LB 205, § 3; Laws 2010, LB861, § 78; Laws 2011, LB311, § 1.

ARTICLE 3

NEBRASKA GRAPE AND WINERY BOARD

Section

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7; Laws 2013, LB230, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.



CHAPTER 54

LIVESTOCK

Article.

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2. Liens. 54-201 to 54-209.
4. Estrays and Trespassing Animals. 54-415.
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 - (c) Commercial Dog and Cat Operator Inspection Act. 54-625 to 54-642.
 - (d) Dog and Cat Purchase Protection Act. 54-645, 54-646.
7. Protection of Health.
 - (a) General Powers and Duties of Department of Agriculture. 54-701.03 to 54-705.
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 - (f) Import Control. 54-784.01, 54-789.
 - (i) Exotic Animal Auctions and Swap Meets. 54-7,105 to 54-7,110.
8. Commercial Feed. 54-857.
9. Livestock Animal Welfare Act. 54-901 to 54-913.
11. Livestock Auction Market Act. 54-1156 to 54-1185.
19. Meat and Poultry Inspection.
 - (b) State Program of Meat and Poultry Inspection. 54-1916. Repealed.
24. Livestock Waste Management Act. 54-2428.

ARTICLE 1

LIVESTOCK BRAND ACT

Section

- | | |
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| 54-1,129. | Livestock auction market or packing plant; brand inspection; election to provide. |
| 54-1,130. | Livestock auction market or packing plant; election; how made. |
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54-170 Act, how cited.

Sections 54-170 to 54-1,131 shall be known and may be cited as the Livestock Brand Act.

Source: Laws 1999, LB 778, § 1; Laws 2000, LB 213, § 3; Laws 2013, LB435, § 1; Laws 2014, LB768, § 1; Laws 2014, LB884, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB768, section 1, with LB884, section 1, to reflect all amendments.

Note: Changes made by LB884 became effective July 18, 2014. Changes made by LB768 became operative July 18, 2014.

54-171 Definitions; where found.

For purposes of the Livestock Brand Act, the definitions found in sections 54-172 to 54-190 shall be used.

Source: Laws 1999, LB 778, § 2; Laws 2013, LB435, § 2; Laws 2014, LB768, § 2.
Operative date July 18, 2014.

54-172 Bill of sale, defined.

Bill of sale means a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the purchaser's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgments. For any conveyance or transfer of title to cattle subject to assessment imposed pursuant to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, for which the purchaser is the collecting person pursuant to 7 C.F.R. 1260.311 for purposes of collecting and remitting such assessment, the bill of sale shall include a notation of the amount the purchaser collected from the seller or deducted from the sale proceeds for the assessment. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the purchaser.

Source: Laws 1999, LB 778, § 3; Laws 2014, LB768, § 3.
Operative date July 18, 2014.

54-175.01 Brand inspection service area, defined.

Brand inspection service area means all Nebraska counties and areas of Nebraska counties contiguous with the brand inspection area designated by section 54-1,109.

Source: Laws 2014, LB768, § 4.
Operative date July 18, 2014.

54-186.01 Out-of-state brand permit, defined.

Out-of-state brand permit means an authorization for a one-time use of a brand registered with a state other than Nebraska to brand cattle imminently being exported out of Nebraska.

Source: Laws 2013, LB435, § 3.

54-1,108 Brand inspections; when; fees; surcharge; reinspection; when.

(1) All brand inspections provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines.

(2)(a) An inspection fee, established by the Nebraska Brand Committee, of not more than seventy-five cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415 or

inspected within the brand inspection area or brand inspection service area by court order or at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle. Such fee may vary to encourage inspection to be performed at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. Brand inspections requested by either a purchaser or seller of cattle located within the brand inspection service area shall be provided upon the same terms and charges as brand inspections performed within the brand inspection area. If stray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(b) A surcharge of not more than twenty dollars, as established by the brand committee, may be charged to cover travel expenses incurred by the brand inspector per inspection location when performing brand inspections. The surcharge shall be collected by the brand inspector and paid by the person requesting the inspection or the person required by law to have the inspection.

(c) Fees for inspections performed outside of the brand inspection area that are not provided for in subdivision (a) of this subsection shall be the inspection fee established in such subdivision plus a fee to cover the actual expense of performing the inspection, including mileage at the rate established by the Department of Administrative Services and an hourly rate, not to exceed thirty dollars per hour, for the travel and inspection time incurred by the brand committee to perform such inspection. The brand committee shall charge and collect the actual expense fee. Such fee shall apply to inspections performed outside the brand inspection area as part of an investigation into known or alleged violations of the Livestock Brand Act and shall be charged against the person committing the violation.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

Source: Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2; Laws 2011, LB181, § 1; Laws 2014, LB768, § 5.
Operative date April 5, 2014.

54-1,110 Brand inspection area; brand inspection requirements.

(1) Except as provided in subsections (2) and (3) of this section, no person shall move, in any manner, cattle from a point within the brand inspection area to a point outside the brand inspection area unless such cattle first have a brand inspection by the Nebraska Brand Committee and a certificate of inspection is issued. A copy of such certificate shall accompany the cattle and shall be retained by all persons moving such cattle as a permanent record.

(2) Cattle in a registered feedlot registered under sections 54-1,120 to 54-1,122 or a registered dairy registered under sections 54-1,122.01 and 54-1,122.02 are not subject to the brand inspection of subsection (1) of this

section. Possession by the shipper or trucker of a shipping certificate from the registered feedlot or registered dairy constitutes compliance if the cattle being shipped are as represented on such shipping certificate.

(3) If the line designating the brand inspection area divides a farm or ranch or lies between noncontiguous parcels of land which are owned or operated by the same cattle owner or owners, a permit may be issued, at the discretion of the Nebraska Brand Committee, to the owner or owners of cattle on such farm, ranch, or parcels of land to move the cattle in and out of the brand inspection area without inspection. If the line designating the brand inspection area lies between a farm or ranch and nearby veterinary medical facilities, a permit may be issued, at the discretion of the brand committee, to the owner or owners of cattle on such farm or ranch to move the cattle in and out of the brand inspection area without inspection to obtain care from the veterinary medical facilities. The brand committee shall issue initial permits only after receiving an application which includes an application fee established by the brand committee which shall not be more than fifteen dollars. The brand committee shall mail all current permitholders an annual renewal notice, for January 1 renewal, which requires a renewal fee established by the brand committee which shall not be more than fifteen dollars. If the permit conditions still exist, the cattle owner or owners may renew the permit.

(4) No person shall sell any cattle knowing that the cattle are to be moved, in any manner, in violation of this section. Proof of shipment or removal of the cattle from the brand inspection area by the purchaser or his or her agent is prima facie proof of knowledge that sale was had for removal from the brand inspection area.

(5) In cases of prosecution for violation of this section, venue may be established in the county of origin or any other county through which the cattle may pass in leaving the brand inspection area.

Source: Laws 1999, LB 778, § 41; Laws 2000, LB 213, § 6; Laws 2002, LB 589, § 8; Laws 2014, LB768, § 6.
Operative date July 18, 2014.

54-1,111 Brand inspection area; sale or trade of cattle; requirements.

(1) Except as provided in subsection (2) of this section, no person shall sell or trade any cattle located within the brand inspection area, nor shall any person buy or purchase any such cattle unless the cattle have been inspected for brands and ownership and a certificate of inspection or brand clearance has been issued by the Nebraska Brand Committee. Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the brand committee. Any time a brand inspection is required by law, a brand investigator or brand inspector may transfer evidence of ownership of such cattle from a seller to a purchaser by issuing a certificate of inspection.

(2) A brand inspection is not required:

(a) For cattle of a registered feedlot registered under sections 54-1,120 to 54-1,122 shipped for direct slaughter or sale on any terminal market;

(b) For cattle of a registered dairy registered under sections 54-1,122.01 and 54-1,122.02 shipped for direct slaughter or sale on any terminal market;

(c) For cattle that are transferred to a family corporation when all the shares of capital stock of the corporation are owned by the husband, wife, children, or grandchildren of the transferor and there is no consideration for the transfer other than the issuance of stock of the corporation to such family members;

(d) When the change of ownership of cattle is a change in form only and the surviving interests are in the exact proportion as the original interests of ownership. When there is a change of ownership described in subdivision (2)(c) or (d) of this section, an affidavit, on a form prescribed by the Nebraska Brand Committee, signed by the transferor and stating the nature of the transfer and the number of cattle involved and the brands presently on the cattle, shall be filed with the brand committee;

(e) For cattle sold or purchased for educational or exhibition purposes or other recognized youth activities if a properly executed bill of sale is exchanged and presented upon demand. Educational or exhibition purpose means cattle sold or purchased for the purpose of being fed, bred, managed, or tended in a program designed to demonstrate or instruct in the use of various feed rations, the selection of individuals of certain physical conformation or breeds, the measurement and recording of rate of gain in weight or fat content of meat or milk produced, or the preparation of cattle for the purpose of exhibition or for judging as to quality and conformation;

(f) For calves under the age of thirty days sold or purchased at private treaty if a bill of sale is exchanged and presented upon demand; and

(g) For purebred cattle raised by the seller and individually registered with an organized breed association if a properly executed bill of sale is exchanged and presented upon demand.

Source: Laws 1999, LB 778, § 42; Laws 2000, LB 213, § 7; Laws 2014, LB768, § 7.

Operative date July 18, 2014.

54-1,120 Registered feedlot; application; requirements; fees; inspections; records.

(1) Any person who operates a cattle feeding operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered feedlot. The application form shall be prescribed by the brand committee and shall be made available by the director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

(a) The operator's feedlot must be permanently fenced; and

(b) The operator must commonly practice feeding cattle to finish for slaughter.

If the application is satisfactory, and upon payment of an initial registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The initial fee for a registered feedlot shall be an amount for a registered feedlot having one thousand head or less capacity and an equal

amount for each additional one thousand head capacity, or part thereof, of such registered feedlot. For each subsequent year, the renewal fee for a registered feedlot shall be an amount for the first one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot and an equal amount for each additional one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot. The brand committee shall set the fee per one thousand head capacity or average annual inventory so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered feedlots to assure that brand laws are complied with, that registered feedlot shipping certificates are available, and that proper records are maintained. Violation of sections 54-1,120 to 54-1,122 subjects the operator to revocation or suspension of the feedlot registration issued. Sections 54-1,120 to 54-1,122 shall not be construed as prohibiting the operation of nonregistered feedlots.

(3) Registered feedlots are subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her feedlot. Cattle having originated from such registered feedlots may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered feedlot operator.

(4) The operator of a registered feedlot shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of the registered feedlots and the records of cattle on feed in such feedlots.

(5) The brand committee may rescind the registration of any registered feedlot operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered feedlots.

Source: Laws 1999, LB 778, § 51; Laws 2014, LB768, § 8.
Operative date April 5, 2014.

54-1,121 Registered feedlot; cattle shipment; requirements.

Cattle sold or shipped from a registered feedlot, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119, and the seller or shipper shall bear the cost of such inspection at the regular fee.

Any other cattle shipped from a registered feedlot are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered feedlot. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered feedlot operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered feedlot operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month,

and one copy shall be retained by the registered feedlot operator. If a shipping certificate does not accompany a shipment of cattle from a registered feedlot to any destination where brand inspection is maintained by the brand committee, all such cattle shall be subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

Source: Laws 1999, LB 778, § 52; Laws 2000, LB 213, § 10; Laws 2011, LB181, § 2.

54-1,122 Registered feedlot; cattle received; requirements.

Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered feedlot. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered feedlot, and the inspection fee and surcharge provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source: Laws 1999, LB 778, § 53; Laws 2011, LB181, § 3.

54-1,122.01 Registered dairy; application; requirements; fees; inspections; records.

(1) Any person who operates a dairy operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered dairy. The application form shall be prescribed by the brand committee and shall be made available by the director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

(a) The operator's dairy must be permanently fenced; and

(b) The operator must identify each animal individually as directed by the Nebraska Brand Committee.

If the application is satisfactory, and upon payment of a registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The initial fee for a registered dairy shall be an amount for a registered dairy having one thousand head or less capacity and an equal amount for each additional one thousand head capacity, or part thereof, of such registered dairy. For each subsequent year, the renewal fee for a registered dairy shall be an amount for the first one thousand head or portion thereof of average annual inventory of dairy cattle of the registered dairy and an equal amount for each additional one thousand head or portion thereof of average annual inventory of dairy cattle of the registered dairy. The brand committee shall set the fee per one thousand head capacity or average annual inventory so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered dairies to assure that brand laws are complied with, that registered dairy shipping certificates are available, and that proper records are maintained. This section shall not be construed as prohibiting the operation of nonregistered dairies.

(3) A registered dairy is subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her dairy. Cattle having originated from any such registered dairy may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at the destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered dairy operator.

(4) The operator of a registered dairy shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of registered dairies and the records of cattle in such registered dairies.

(5) The brand committee may rescind or suspend the registration of any registered dairy operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered dairies.

Source: Laws 2000, LB 213, § 1; Laws 2014, LB768, § 9.

Operative date April 5, 2014 .

54-1,122.02 Registered dairy; cattle shipment or receipt; requirements.

(1) Cattle sold or shipped from a registered dairy, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119 and the seller or shipper shall bear the cost of such inspection at the regular fee.

(2) Any other cattle shipped from a registered dairy are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered dairy. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered dairy operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered dairy operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered dairy operator. If a shipping certificate does not accompany a shipment of cattle from a registered dairy to any destination where brand inspection is maintained by the brand committee, all such cattle are subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

(3) Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered dairy. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered

dairy, and the inspection fee and surcharge provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source: Laws 2000, LB 213, § 2; Laws 2011, LB181, § 4.

54-1,128 Brand with brand recorded or registered in another state; application for out-of-state brand permit; contents; fee.

(1) An owner may brand cattle with a brand recorded or registered in another state when:

(a) Cattle are purchased at a livestock auction market licensed under the Livestock Auction Market Act or congregated at another location approved by the Nebraska Brand Committee;

(b) The cattle will be imminently exported from Nebraska;

(c) The cattle are branded at the livestock auction market or other approved location; and

(d) An out-of-state brand permit has been obtained prior to branding the cattle.

(2) An application for an out-of-state brand permit shall be made to a brand inspector and shall include a description of the brand, a written application, and a fee not to exceed fifty dollars as determined by the Nebraska Brand Committee. A brand inspector shall evaluate and may approve an out-of-state brand permit within a reasonable period of time.

(3) Cattle branded under an out-of-state brand permit shall remain subject to all other brand inspection requirements under the Livestock Brand Act.

Source: Laws 2013, LB435, § 4.

Cross References

Livestock Auction Market Act, see section 54-1156.

54-1,129 Livestock auction market or packing plant; brand inspection; election to provide.

The owner or operator of any livestock auction market, as defined in section 54-1158, or packing plant located in any county outside the brand inspection area may voluntarily elect to provide brand inspection for all cattle brought to such livestock auction market or packing plant from within the brand inspection area upon compliance with sections 54-1,129 to 54-1,131.

Source: Laws 1963, c. 319, § 28, p. 972; Laws 1987, LB 450, § 9; Laws 1999, LB 778, § 76; R.S.1943, (2010), § 54-1183; Laws 2014, LB884, § 2.

Effective date July 18, 2014.

54-1,130 Livestock auction market or packing plant; election; how made.

The election provided for by section 54-1,129 shall be made by (1) filing with the Secretary of State, in form to be prescribed by the secretary, a written notice of such election and agreement to be bound by section 54-1,131 and (2)

posting conspicuously on the premises a notice of the fact that brand inspection is provided at such livestock auction market or packing plant.

Source: Laws 1963, c. 319, § 29, p. 973; Laws 1987, LB 450, § 10; R.S.1943, (2010), § 54-1184; Laws 2014, LB884, § 3.
Effective date July 18, 2014.

54-1,131 Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.

Inspection provided for in sections 54-1,129 to 54-1,131 shall be conducted in the manner established by the Livestock Brand Act. The owner or operator making such election may be required to guarantee to the Nebraska Brand Committee that inspection fees derived from such livestock auction market or packing plant will be sufficient, in each twelve-month period, to pay the per diem and mileage of the inspectors required and that he or she will reimburse the committee for any deficit incurred in any such twelve-month period. Such guarantee shall be secured by a corporate surety bond, to be approved by the Secretary of State, in a penal sum to be established by the Nebraska Brand Committee.

Source: Laws 1963, c. 319, § 30, p. 973; Laws 1987, LB 450, § 11; Laws 1999, LB 778, § 77; Laws 2000, LB 213, § 11; R.S.1943, (2010), § 54-1185; Laws 2014, LB884, § 4.
Effective date July 18, 2014.

ARTICLE 2

LIENS

Section

- 54-201. Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.
54-208. Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.
54-209. Lien satisfied; financing statement; termination.

54-201 Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.

(1) When any person, firm, corporation, partnership, or limited liability company not provided for in subsection (2) of this section procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care, as long as the holders of any prior liens shall have agreed in writing to the contract for the feed and care of the livestock involved. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation,

partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(2) When any person, firm, corporation, partnership, or limited liability company whose residence or principal place of business is located outside the State of Nebraska procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company within the State of Nebraska to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(3) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Source: Terr. Laws 1867, § 1, p. 12; Laws 1889, c. 31, § 1, p. 378; R.S.1913, § 89; C.S.1922, § 97; C.S.1929, § 54-201; Laws 1935, c. 118, § 1, p. 433; C.S.Supp.,1941, § 54-201; R.S.1943, § 54-201; Laws 1982, LB 962, § 2; Laws 1984, LB 808, § 7; Laws 1988, LB 943, § 18; Laws 1993, LB 121, § 335; Laws 1998,

LB 1321, § 96; Laws 1999, LB 550, § 36; Laws 2001, LB 54, § 25; Laws 2014, LB750, § 16.
Effective date April 11, 2014.

54-208 Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.

When any person, firm, partnership, limited liability company, or corporation contracts or agrees with another person, firm, partnership, limited liability company, or corporation to deliver any feed or feed ingredients for any kind of livestock, the person, firm, partnership, limited liability company, or corporation so contracted or agreed with shall have a lien upon such livestock for the feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients for the agreed-upon contract price or, in case no price has been agreed upon, for the reasonable value of such feed or feed ingredients and related delivery costs, which shall be a first, paramount, and prior lien if the holders of any prior liens have agreed in writing to the contract for the feed or feed ingredients and related delivery costs. The lien may only be enforced against the person, firm, partnership, limited liability company, or corporation who has contracted or agreed for such feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients.

A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto:

(1) The name and address and the social security number or federal tax identification number of the person, firm, partnership, limited liability company, or corporation claiming the lien;

(2) The name and address and the social security number or federal tax identification number, if known, of the person, firm, partnership, limited liability company, or corporation for whom such feed or feed ingredients were delivered;

(3) The amount due for such feed or feed ingredients and related delivery costs covered by the lien;

(4) The place where such livestock are located;

(5) A reasonable description of such livestock including the number and type of such livestock; and

(6) The last date on which such feed or feed ingredients were delivered.

The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, partnership, limited liability company, or corporation for whom the feed or feed ingredients were delivered.

Such lien shall attach and have priority as of the date of the filing if filed in the manner provided in this section. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

Nothing in this section shall be construed to amend or repeal section 54-201 relating to agisters' liens.

Source: Laws 1984, LB 1064, § 1; Laws 1988, LB 943, § 19; Laws 1993, LB 121, § 336; Laws 1998, LB 1321, § 97; Laws 1999, LB 550, § 37; Laws 2001, LB 54, § 26; Laws 2014, LB750, § 17.
Effective date April 11, 2014.

54-209 Lien satisfied; financing statement; termination.

When a lien created under section 54-201 or 54-208 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

Source: Laws 1985, LB 606, § 16; Laws 1988, LB 943, § 20; Laws 1999, LB 550, § 38; Laws 2001, LB 54, § 27; Laws 2014, LB750, § 18.
Effective date April 11, 2014.

ARTICLE 4

ESTRAYS AND TRESPASSING ANIMALS

Section

54-415. Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.

54-415 Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.

Any person taking up an estray within the brand inspection area or brand inspection service area shall report the same within seven days thereafter to the Nebraska Brand Committee. Any person taking up an estray in any other area of the state shall report the same to the county sheriff of the county where the estray was taken. If the animal is determined to be an estray by a representative of the Nebraska Brand Committee or the county sheriff, as the case may be, such animal shall, as promptly as may be practicable, be sold through the most convenient livestock auction market. The proceeds of such sale, after deducting the selling expenses, shall be paid over to the Nebraska Brand Committee to be placed in the estray fund identified in section 54-1,118, if such estray was taken up within the brand inspection area or brand inspection service area, and otherwise to the treasurer of the county in which such estray was taken up. During the time such proceeds are impounded, any person taking up such estray may file claim with the Nebraska Brand Committee or the county treasurer, as the case may be, for the expense of feeding and keeping such estray while in his or her possession. When such claim is filed it shall be the duty of the Nebraska Brand Committee or the county board, as the case may be, to decide on the validity of the claim so filed and allow the claim for such amount as may be deemed equitable. When the estray is taken up within the brand inspection area or brand inspection service area, such proceeds shall be impounded for one year, unless ownership is determined sooner by the Nebraska Brand Committee, and if ownership is not determined within such one-year period, the proceeds shall be paid into the permanent school fund, less the actual expenses incurred in the investigation and processing of the estray fund. Any amount deducted as actual expenses incurred shall be deposited in the Nebraska Brand Inspection and Theft Prevention Fund. When the estray is

taken up outside the brand inspection area or brand inspection service area and ownership cannot be determined by the county board, the county board shall then order payment of the balance of the sale proceeds less expenses, to the permanent school fund. If the brand committee or the county board determines ownership of an estray sold in accordance with this section by means of evidence of ownership other than the owner's recorded Nebraska brand, an amount not to exceed the actual investigative costs or expenses may be deducted from the proceeds of the sale. Any person who violates this section is guilty of a Class II misdemeanor. The definitions found in sections 54-172 to 54-190 apply to this section.

Source: R.S.1866, p. 154; R.S.1913, § 123; C.S.1922, § 131; C.S.1929, § 54-415; R.S.1943, § 54-415; Laws 1965, c. 333, § 1, p. 953; Laws 1967, c. 344, § 1, p. 920; Laws 1977, LB 39, § 19; Laws 1979, LB 564, § 19; Laws 1980, LB 797, § 23; Laws 1983, LB 536, § 5; Laws 1999, LB 778, § 61; Laws 2014, LB768, § 10. Operative date July 18, 2014.

ARTICLE 6 DOGS AND CATS

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

Section

- 54-625. Act, how cited.
- 54-626. Terms, defined.
- 54-627. License requirements; fees; renewal; premises available for inspection.
- 54-630. Application; denial; grounds; appeal.
- 54-637. Information on spaying and neutering; requirements.
- 54-640. Commercial dog or cat breeder; duties.
- 54-641. Licensees; primary enclosures; requirements.
- 54-641.01. Commercial dog breeder; dogs; opportunity for exercise.
- 54-641.02. Commercial dog breeder; veterinary care; review of health records; duties of breeder.
- 54-641.03. Breeding dog; microchip; identification.
- 54-642. Department; submit report of costs and revenue.

(d) DOG AND CAT PURCHASE PROTECTION ACT

- 54-645. Terms, defined.
- 54-646. Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625 Act, how cited.

Sections 54-625 to 54-643 shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Source: Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1; Laws 2009, LB241, § 1; Laws 2012, LB427, § 1.

54-626 Terms, defined.

For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) Animal control facility means a facility operated by or under contract with the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(2) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

(3) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, an animal welfare society, a society for the prevention of cruelty to animals, or another nonprofit organization devoted to the welfare, protection, and humane treatment of such animals;

(4) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed at such facility overnight. Veterinary clinics, animal control facilities, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

(5) Breeding dog means any sexually intact male or female dog six months of age or older owned or harbored by a commercial dog breeder;

(6) Cat means any animal which is wholly or in part of the species *Felis domesticus*;

(7) Commercial cat breeder means a person engaged in the business of breeding cats:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more cats in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose cats produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases cats for later retail sale or brokered trading;

(8) Commercial dog breeder means a person engaged in the business of breeding dogs:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more dogs in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more dogs, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose dogs produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases dogs for later retail sale or brokered trading;

(9) Dealer means any person who is not a commercial dog or cat breeder or a pet shop but is engaged in the business of buying for resale or selling or

exchanging dogs or cats as a principal or agent or who claims to be so engaged. A person who purchases, sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a dealer;

(10) Department means the Bureau of Animal Industry of the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

(11) Director means the Director of Agriculture or his or her designated employee;

(12) Dog means any animal which is wholly or in part of the species *Canis familiaris*;

(13) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats for which temporary care is provided. Any foster home which houses more than twenty dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

(14) Housing facility means any room, building, or areas used to contain a primary enclosure;

(15) Inspector means any person who is employed by the department and who is authorized to perform inspections pursuant to the act;

(16) Licensee means a person who has qualified for and received a license from the department pursuant to the act;

(17) Pet animal means an animal kept as a household pet for the purpose of companionship, which includes, but is not limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians, and reptiles;

(18) Pet shop means a retail establishment which sells pet animals and related supplies;

(19) Premises means all public or private buildings, kennels, pens, and cages used by a facility and the public or private ground upon which a facility is located if such buildings, kennels, pens, cages, or ground are used by the owner or operator of such facility in the usual course of business;

(20) Primary enclosure means any structure used to immediately restrict a dog or cat to a limited amount of space, such as a room, pen, cage, or compartment;

(21) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture;

(22) Stop-movement order means a directive preventing the movement or removal of any dog or cat from the premises; and

(23) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

Source: Laws 2000, LB 825, § 2; Laws 2003, LB 233, § 1; Laws 2003, LB 274, § 2; Laws 2004, LB 1002, § 1; Laws 2009, LB241, § 2; Laws 2010, LB910, § 5; Laws 2012, LB427, § 2.

54-627 License requirements; fees; renewal; premises available for inspection.

(1) A person shall not operate as a commercial dog or cat breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, an animal rescue, or a pet shop unless the person obtains the appropriate license. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals. If a facility listed in this subsection is not located at the owner's residence, the name and address of the owner shall be posted on the premises.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

- (i) Ten or fewer dogs or cats, one hundred fifty dollars;
- (ii) Eleven to fifty dogs or cats, two hundred dollars;
- (iii) Fifty-one to one hundred dogs or cats, two hundred fifty dollars;
- (iv) One hundred one to one hundred fifty dogs or cats, three hundred dollars;
- (v) One hundred fifty-one to two hundred dogs or cats, three hundred fifty dollars;
- (vi) Two hundred one to two hundred fifty dogs or cats, four hundred dollars;
- (vii) Two hundred fifty-one to three hundred dogs or cats, four hundred fifty dollars;
- (viii) Three hundred one to three hundred fifty dogs or cats, five hundred dollars;
- (ix) Three hundred fifty-one to four hundred dogs or cats, five hundred fifty dollars;
- (x) Four hundred one to four hundred fifty dogs or cats, six hundred dollars;
- (xi) Four hundred fifty-one to five hundred dogs or cats, six hundred fifty dollars; and
- (xii) More than five hundred dogs or cats, two thousand dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The annual license fee for an animal rescue shall be one hundred fifty dollars.

(e) The annual license fee for a commercial dog or cat breeder shall be determined according to the fee schedule set forth in subdivision (a) of this subsection based upon the number of breeding dogs or cats owned or harbored by the commercial breeder.

(f) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee that may be charged shall not result in a fee for any license category that exceeds the license fee set forth in this subsection by more than one hundred dollars.

(4) A license to operate as a commercial dog or cat breeder, dealer, boarding kennel, or pet shop shall be renewed by filing with the department on or before April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility, animal rescue, or animal shelter shall be renewed by filing with the department on or before October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in a late renewal fee equal to twenty percent of the annual license fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the license fee. The purpose of the late renewal fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late renewal fee shall not prohibit the director from taking any other action as provided in the act.

(5) A licensee under this section shall make its premises available for inspection pursuant to section 54-628 during normal business hours.

(6) The state or any political subdivision of the state which contracts out its animal control duties to a facility not operated by the state or any political subdivision of the state may be exempted from the licensing requirements of this section if such facility is licensed as an animal control facility, animal rescue, or animal shelter for the full term of the contract with the state or its political subdivision.

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

Source: Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2; Laws 2009, LB241, § 3; Laws 2010, LB910, § 6; Laws 2012, LB427, § 3.

54-630 Application; denial; grounds; appeal.

(1) Before the department approves an application for an initial license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. Except as provided in subsection (2) of this section, an applicant who qualifies shall be issued a license.

(2) The department may deny an application for an initial or renewal license as a commercial dog or cat breeder, dealer, boarding kennel, animal control facility, animal shelter, animal rescue, or pet shop upon a finding that the applicant is unsuited to perform the obligations of a licensee. The applicant shall be determined unsuited to perform the obligations of a licensee if the

department finds that the applicant has deliberately misrepresented or concealed any information provided on or with the application or any other information provided to the department under this section or that within the previous five years the applicant:

(a) Has been convicted of any law regarding the disposition or treatment of dogs or cats in any jurisdiction; or

(b) Has operated a breeder facility under a license or permit issued by any jurisdiction that has been revoked, suspended, or otherwise subject to a disciplinary proceeding brought by the licensing authority in that jurisdiction if such proceeding resulted in the applicant having voluntarily surrendered a license or permit to avoid disciplinary sanctions.

(3) In addition to the application, the department may require the applicant to provide additional documentation pertinent to the department's determination of the applicant's suitability to perform the duties of a licensee under the act.

(4) An applicant who is denied an initial or renewal license under this section shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued or renewed. All such hearings shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5; Laws 2012, LB427, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

54-637 Information on spaying and neutering; requirements.

(1) Every dealer, commercial dog or cat breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

Source: Laws 2003, LB 274, § 4; Laws 2010, LB910, § 8; Laws 2012, LB427, § 5.

54-640 Commercial dog or cat breeder; duties.

A commercial dog or cat breeder shall:

(1) Maintain housing facilities and primary enclosures in a sanitary condition;

(2) Enable all dogs and cats to remain dry and clean;

(3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;

(6) Provide dogs with adequate socialization. For purposes of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed;

(7) Assure that a handler's hands are washed before and after handling each infectious or contagious cat;

(8) Maintain a written veterinary care plan developed in conjunction with an attending veterinarian; and

(9) Provide veterinary care without delay when necessary.

Source: Laws 2003, LB 274, § 7; Laws 2009, LB241, § 10; Laws 2012, LB427, § 6.

54-641 Licensees; primary enclosures; requirements.

The primary enclosures of all licensees shall meet the following requirements:

(1) A primary enclosure shall provide adequate space appropriate to the age, size, weight, and breed of each dog or cat. For purposes of this subdivision, adequate space means sufficient room to allow each dog or cat to turn around without touching another animal, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner without the head of such animal touching the top of the enclosure, which shall be at least six inches above the head of the tallest animal when the animal is standing;

(2) A primary enclosure shall have solid surface flooring or a flooring material that protects the dogs' and cats' feet and legs from injury and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;

(3) If a primary enclosure has a suspended floor constructed of metal strands, the strands shall either be greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass; and

(4) The suspended floor of any primary enclosure shall be strong enough so that the floor does not sag or bend between the structural supports.

Source: Laws 2003, LB 274, § 8; Laws 2012, LB427, § 7.

54-641.01 Commercial dog breeder; dogs; opportunity for exercise.

(1) A commercial dog breeder shall provide dogs with the opportunity for exercise as follows:

(a) A primary enclosure shall have an entry that allows each dog unfettered access to an exercise area that is at least three times the size of the requirements for a primary enclosure. The entry may be closed during cleaning, under direction of a licensed veterinarian, or in the case of inclement weather. The exercise area shall have solid surface flooring or a flooring material that if of mesh or slatted construction does not allow the dog's feet to pass through any openings in the floor. Any exercise area suspended floor constructed of metal strands shall be required to have strands that are greater than one-eighth of an

inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass. All suspended flooring shall be strong enough so as not to sag or bend between any structural supports and be of a surface that is easily cleaned and disinfected. The exercise area shall have protection available from wind, rain, and snow if access to the primary enclosure is unavailable; and

(b) Any dog not housed in a primary enclosure that meets the exercise area requirements of subdivision (a) of this subsection shall be provided with the opportunity for exercise according to a plan approved by the attending veterinarian, in writing. The opportunity for exercise shall be accomplished by:

(i) Providing access to a run or open area at a frequency and duration prescribed by the attending veterinarian; or

(ii) Removal of the dogs from the primary enclosure at least twice daily to be walked, allowed to move about freely in an open area, or placed in an exercise area that meets the requirements of subdivision (a) of this subsection.

(2) Subsection (1) of this section shall not apply to:

(a) Any dog that is less than six months of age;

(b) The primary enclosure of a nursing facility that houses any female dog that is due to give birth within the following two weeks or a nursing dog and her puppies;

(c) Any dog that is injured or displays any clinical signs of disease. In such case, any injury or clinical signs of disease shall be noted in the dog's health records and the dog shall be returned to exercise upon recovery from such injury or disease; or

(d) Any dog that is excluded from the exercise requirements of subsection (1) of this section pursuant to a written directive of a licensed veterinarian.

(3) Any primary enclosure newly constructed after October 1, 2012, shall comply with subdivision (1)(a) of this section. A primary enclosure in existence on October 1, 2012, shall not be required to comply with subdivision (1)(a) of this section for the life of such facility.

Source: Laws 2012, LB427, § 8.

54-641.02 Commercial dog breeder; veterinary care; review of health records; duties of breeder.

(1) A commercial dog breeder shall ensure that each dog under his or her care, supervision, or control receives adequate veterinary care. A commercial dog breeder's written veterinary care plan shall provide for, in addition to requirements prescribed by rule and regulation of the department:

(a) The maintenance of individual health records for each dog bought, raised, or otherwise obtained, held, kept, maintained, sold, donated, or otherwise disposed of, including by death or euthanasia, except that litter health records may be kept on litters when litter mates are treated with the same medication or procedure;

(b) Establishment of a program of disease control and prevention, pest and parasite control, before and after procedure care, nutrition, and euthanasia supervised by the attending veterinarian. Such program shall provide for regularly scheduled onsite visits to the facility by the veterinarian and shall be annually reviewed and updated by the veterinarian at the time of an onsite visit that includes the veterinarian's walk-through of the facility and observation by

the veterinarian of dogs under the commercial dog breeder's care, supervision, or control; and

(c) A wellness examination by a licensed veterinarian of each breeding dog at least once every three years, to include a basic physical and dental examination and corresponding notations entered into the dog's health records. Such examination shall not require laboratory analysis unless directed by the veterinarian.

(2) During regularly scheduled inspections of a commercial dog breeder's facility conducted by the department, the health records of a random sample of at least five percent of the breeding dogs shall be reviewed to verify that such records correspond to the dog's permanent identification and verify that the health records are properly maintained.

(3) For each dog under the commercial dog breeder's care, supervision, or control, the breeder shall:

(a) Ensure that all breeding dogs receive regular grooming. Coat matting shall not exceed ten percent, and nails shall be trimmed short enough to ensure the comfort of the dog;

(b) Contact a licensed veterinarian without delay after an occurrence of a serious or life-threatening injury or medical condition of such dog. The dog shall be treated as prescribed by the veterinarian;

(c) Ensure that all surgical births or other surgical procedures shall be performed by a licensed veterinarian using anesthesia. Commercial dog breeders may remove dew claws and perform tail docking under sterile conditions within the first seven days of the dog's life. Wounds shall be treated and monitored by the breeder; and

(d) Ensure that, if euthanasia is necessary, it shall be performed by a licensed veterinarian in accordance with recommendations for the humane euthanization of dogs as published by the American Veterinary Medical Association.

Source: Laws 2012, LB427, § 9.

54-641.03 Breeding dog; microchip; identification.

Each breeding dog shall be identified by the implantation of a microchip, and each dog's health records shall accurately record the appropriate identification. The department may by rule or regulation require identification of any dog by tag, tattoo, or other method if the microchip system is determined to be ineffective. A commercial dog breeder licensed prior to October 1, 2012, who utilizes a method or methods of identification other than microchipping as authorized by rule and regulation of the department prior to October 1, 2012, may continue to utilize such method or methods.

Source: Laws 2012, LB427, § 10.

54-642 Department; submit report of costs and revenue.

On or before November 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program

Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

Source: Laws 2006, LB 856, § 16; Laws 2012, LB782, § 82.

(d) DOG AND CAT PURCHASE PROTECTION ACT

54-645 Terms, defined.

For purposes of the Dog and Cat Purchase Protection Act:

(1) Casual breeder means any person, other than a commercial dog or cat breeder as such terms are defined in section 54-626, who offers for sale, sells, trades, or receives consideration for one or more pet animals from a litter produced by a female dog or cat owned by such casual breeder;

(2) Clinical symptom means indication of an illness or dysfunction that is apparent to a veterinarian based on the veterinarian's observation, examination, or testing of an animal or on a review of the animal's medical records;

(3) Health certificate means the official small animal certificate of veterinary inspection of the Bureau of Animal Industry of the Department of Agriculture;

(4) Pet animal means a dog, wholly or in part of the species *Canis familiaris*, or a cat, wholly or in part of the species *Felis domesticus*, that is under fifteen months of age;

(5) Purchaser means the final owner of a pet animal purchased from a seller. Purchaser does not include a person who purchases a pet animal for resale;

(6) Seller means a casual breeder or any commercial establishment, including a commercial dog or cat breeder, dealer, or pet shop as such terms are defined in section 54-626, that engages in a business of selling pet animals to a purchaser. A seller does not include an animal control facility, animal rescue, or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility, animal rescue, or animal shelter conducts offsite at any pet store or other commercial establishment; and

(7)(a) Serious health problem means a congenital or hereditary defect or contagious disease that causes severe illness or death of the pet animal.

(b) Serious health problem does not include (i) parvovirus if the diagnosis of parvovirus is made after the seven-business-day requirement in subsection (1) of section 54-647 or (ii) any other contagious disease that causes severe illness or death after ten calendar days after delivery of the pet animal to the purchaser.

Source: Laws 2009, LB241, § 12; Laws 2010, LB910, § 10; Laws 2012, LB427, § 11.

54-646 Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.

(1) A seller shall deliver to the purchaser at the time of sale of a pet animal a written disclosure statement containing the following information regarding the pet animal:

(a) The name, address, and license number of any commercial dog or cat breeder or dealer as such terms are defined in section 54-626 or, if applicable, the United States Department of Agriculture license number of the breeder or

any broker who has had possession of the animal prior to the seller's possession;

(b) The date of the pet animal's birth, if known, the state in which the pet animal was born, if known, and the date the seller received the pet animal;

(c) The sex and color of the pet animal, any other identifying marks apparent upon the pet animal, and the breed of the pet animal, if known, or a statement that the breed of the pet animal is unknown or the pet animal is of mixed breed;

(d) The pet animal's individual identifying tag, tattoo, microchip number, or collar number;

(e) The names and registration numbers of the sire and dam and the litter number, if applicable and if known;

(f) A record of any vaccination, worming treatment, or medication administered to the pet animal while in the possession of the seller and, if known, any such vaccination, treatment, or medication administered to the pet animal prior to the date the seller received the pet animal; and

(g) The date or dates of any examination of the pet animal by a licensed veterinarian while in the possession of the seller.

(2) The seller may include any of the following with the written disclosure statement required by subsection (1) of this section:

(a) A statement that a veterinarian examined the pet animal and, at the time of the examination, the pet animal had no apparent or clinical symptoms of a serious health problem that would adversely affect the health of the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future; and

(b) A record of any serious health problem that adversely affects the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future.

(3) The written disclosure statement made pursuant to this section shall be signed by the seller certifying the accuracy of the written disclosure statement and by the purchaser acknowledging receipt of the written disclosure statement. In addition to information required to be given to a purchaser under this section, at the time of sale the seller shall provide the purchaser with written notice of the existence of the purchaser's rights and responsibilities under the Dog and Cat Purchase Protection Act or a legible copy of the act.

(4) If the pet animal is sold to a purchaser who resides outside of the state or intends that the pet animal will be relocated or permanently domiciled outside of the state, the seller shall provide the purchaser with a health certificate signed by a licensed veterinarian who has examined the pet animal and is authorized to certify such certificate.

(5) The seller shall maintain a copy of any written disclosure statements made and any other records on the health, status, or disposition of each pet animal for at least one year after the date of sale to a purchaser.

Source: Laws 2009, LB241, § 13; Laws 2012, LB427, § 12.

ARTICLE 7
PROTECTION OF HEALTH

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section

- 54-701.03. Terms, defined.
 54-703. Prevention of diseases; enforcement; inspections; rules and regulations.
 54-704. Prevention of diseases; federal agents; powers.
 54-705. Prevention of diseases; orders of department; enforcement.

(d) GENERAL PROVISIONS

- 54-742. Diseased animals; duty to report; livestock disease reporting system; animal infected with bovine trichomoniasis; report required; notice to adjacent landowner or land manager; form or affidavit submitted to department; department; duties; costs.
 54-750. Diseased animals; harboring or sale prohibited; penalties.
 54-751. Rules and regulations; violations; penalties.
 54-752. Violations; penalties.
 54-753. Prevention of disease; writ of injunction available.
 54-753.06. Transferred to section 54-7,109.

(f) IMPORT CONTROL

- 54-784.01. Act, how cited.
 54-789. Individual identification of cattle; Department of Agriculture; powers; State Veterinarian; powers.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

- 54-7,105. Act, how cited; purpose of sections.
 54-7,105.01. Terms, defined.
 54-7,106. Permit; notification requirements; application; denial; grounds; prohibited acts.
 54-7,107. Records; contents; access by department.
 54-7,108. Prohibited transfers; certificate of veterinary inspection; duties of exotic animal auction or exchange venue organizer; requirements for certain animals.
 54-7,109. Compliance with game laws required.
 54-7,110. Act; enforcement; rules and regulations; penalties.

(a) GENERAL POWERS AND DUTIES OF
DEPARTMENT OF AGRICULTURE

54-701.03 Terms, defined.

For purposes of sections 54-701 to 54-753.05 and 54-797 to 54-7,103:

(1) Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, as such regulation existed on January 1, 2013;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) Bureau of Animal Industry means the Bureau of Animal Industry of the Department of Agriculture of the State of Nebraska and includes the State Veterinarian, deputy state veterinarian, veterinary field officers, livestock inspectors, investigators, and other employees of the bureau;

(4) Dangerous disease means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious

threat to livestock health, and is of major importance in the trade of livestock and livestock products;

(5) Department means the Department of Agriculture of the State of Nebraska;

(6) Director means the Director of Agriculture of the State of Nebraska or his or her designee;

(7) Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;

(8) Exposed means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;

(9) Herd means any group of livestock maintained on common ground for any purpose or two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to health status;

(10) Livestock means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;

(11) Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese;

(12) Program disease means a livestock disease for which specific legislation exists for disease control or eradication;

(13) Quarantine means restriction of (a) movement imposed by the department on an animal, group of animals, or herd of animals because of infection with, or exposure to, a disease agent which affects livestock and (b) use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(14) Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary;

(15) Sale means a sale, lease, loan, trade, barter, or gift;

(16) Surveillance means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state and may include the observation or physical examination of an animal; and

(17) Veterinarian means an individual who is a graduate of an accredited college of veterinary medicine.

Source: Laws 1993, LB 267, § 2; Laws 1995, LB 718, § 6; Laws 1999, LB 404, § 25; Laws 1999, LB 870, § 2; Laws 2001, LB 438, § 3; Laws 2006, LB 856, § 17; Laws 2014, LB884, § 5.
Effective date July 18, 2014.

54-703 Prevention of diseases; enforcement; inspections; rules and regulations.

(1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of the department shall enforce the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753.05 and 54-797 to 54-7,103 as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The Department of Agriculture may further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of sections 54-701 to 54-753.05 and 54-797 to 54-7,103.

Source: Laws 1927, c. 12, art. I, § 3, p. 81; C.S.1929, § 54-903; R.S.1943, § 54-703; Laws 1993, LB 267, § 4; Laws 2001, LB 438, § 4; Laws 2006, LB 856, § 18; Laws 2007, LB296, § 224; Laws 2014, LB884, § 6.

Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-704 Prevention of diseases; federal agents; powers.

Any veterinary inspector or agent of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the United States Department of Agriculture for service in Nebraska may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department and when so authorized shall have and exercise all rights and powers vested by the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753.05 and 54-797 to 54-7,103 in agents and representatives in the regular employ of the department.

Source: Laws 1927, c. 12, art. I, § 4, p. 81; C.S.1929, § 54-904; R.S.1943, § 54-704; Laws 1993, LB 267, § 5; Laws 2001, LB 438, § 5; Laws 2006, LB 856, § 19; Laws 2014, LB884, § 7.

Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-705 Prevention of diseases; orders of department; enforcement.

The Department of Agriculture or any officer, agent, employee, or appointee thereof may call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of

the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753.05, and such officer shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

Source: Laws 1927, c. 12, art. I, § 5, p. 82; C.S.1929, § 54-905; R.S.1943, § 54-705; Laws 1972, LB 1032, § 261; Laws 1988, LB 1030, § 45; Laws 1993, LB 267, § 6; Laws 2001, LB 438, § 6; Laws 2006, LB 856, § 20; Laws 2014, LB884, § 8.
Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

(d) GENERAL PROVISIONS

54-742 Diseased animals; duty to report; livestock disease reporting system; animal infected with bovine trichomoniasis; report required; notice to adjacent landowner or land manager; form or affidavit submitted to department; department; duties; costs.

(1) It is the duty of any person who discovers, suspects, or has reason to believe that any animal belonging to him or her or which he or she has in his or her possession or custody or which, belonging to another, may come under his or her observation is affected with any dangerous, infectious, contagious, or otherwise transmissible disease which affects livestock to immediately report such fact, belief, or suspicion to the department or to any agent, employee, or appointee thereof.

(2) The department shall work together with livestock health committees, livestock groups, diagnostic laboratories, practicing veterinarians, producers, and others who may be affected, to adopt and promulgate rules and regulations to effectuate a workable livestock disease reporting system according to the provisions of this section. The rules and regulations shall establish who shall report diseases, what diseases shall be reported, how such diseases shall be reported, to whom diseases shall be reported, the method by which diseases shall be reported, and the frequency of reports required. For disease reporting purposes, the department shall categorize livestock diseases according to relative economic or health risk factors and may provide different reporting measures for the various categories.

(3) Any person who reasonably suspects that any beef or dairy breeding bull belonging to him or her or which he or she has in his or her possession or custody is infected with bovine trichomoniasis shall not sell or transport such animal, except for consignment directly to a federally recognized slaughter establishment, unless such person causes such animal to be tested for bovine trichomoniasis. Any person who owns or has possession or custody of a beef or dairy breeding bull, or who has a beef or dairy breeding bull belonging to another under his or her observation, for which a laboratory confirmed diagnosis of bovine trichomoniasis has been made, shall report such diagnosis to the department within five business days after receipt of the laboratory confirmation. Any such breeding bull for which a laboratory confirmation of bovine

trichomoniasis has been made shall not be sold or transported except for consignment directly to a federally recognized slaughter establishment.

(4)(a) An owner or manager of any beef or dairy breeding bull for which a laboratory confirmed diagnosis of bovine trichomoniasis has been made shall notify each adjacent landowner or land manager of the diagnosis if such land is capable of maintaining livestock susceptible to bovine trichomoniasis. Such notification shall be made to each landowner or land manager within fourteen days after the diagnosis even if cattle are not currently maintained on the owner's or manager's land.

(b) The owner or manager of the cattle shall submit to the department a form or affidavit attesting to the fact that the notification required under this subsection has occurred. The form or affidavit shall be submitted to the department within fourteen days after the diagnosis and shall include the names of adjacent landowners or land managers who were notified and their contact information.

(c) If an owner or manager does not, within such fourteen-day period, submit the form or affidavit indicating that adjacent landowners or land managers have been notified as required under this subsection, the department shall notify each adjacent landowner or land manager of the diagnosis. The department shall assess the administrative costs of the department to notify the adjacent landowners or land managers against the owner or manager that failed to comply with this subsection. The department shall determine the definition of adjacent based on the disease characteristics and modes of transmission. The department shall remit any administrative costs collected under this subsection to the State Treasurer for credit to the Nebraska Agricultural Products Marketing Cash Fund.

Source: Laws 1927, c. 12, art. VIII, § 1, p. 92; C.S.1929, § 54-938; R.S.1943, § 54-742; Laws 1993, LB 267, § 7; Laws 2001, LB 438, § 7; Laws 2013, LB423, § 4.

Cross References

Definitions for sections 54-742 to 54-753.05, see section 54-701.03.

54-750 Diseased animals; harboring or sale prohibited; penalties.

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal or any part thereof affected with an infectious, contagious, or otherwise transmissible disease except as provided by sections 54-701 to 54-753 and the rules and regulations prescribed by the Department of Agriculture thereunder. Any person so offending shall be deemed guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 9, p. 94; C.S.1929, § 54-946; R.S.1943, § 54-750; Laws 1977, LB 39, § 23; Laws 1993, LB 267, § 13; Laws 2006, LB 856, § 21; Laws 2014, LB884, § 9. Effective date July 18, 2014.

54-751 Rules and regulations; violations; penalties.

It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by the Department of Agriculture pursuant to authority granted by the Exotic Animal Auction or Exchange Venue Act and sections

54-701 to 54-753, and any person so offending shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 10, p. 94; C.S.1929, § 54-947; R.S.1943, § 54-751; Laws 1977, LB 39, § 24; Laws 2001, LB 438, § 17; Laws 2006, LB 856, § 22; Laws 2014, LB884, § 10. Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-752 Violations; penalties.

Any person violating any of the provisions of the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753 shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 13, p. 95; C.S.1929, § 54-950; R.S.1943, § 54-752; Laws 1953, c. 184, § 8, p. 581; Laws 1977, LB 39, § 25; Laws 2001, LB 438, § 18; Laws 2006, LB 856, § 23; Laws 2014, LB884, § 11. Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-753 Prevention of disease; writ of injunction available.

The penal provisions of section 54-752 shall not be exclusive, but the district courts of this state, in the exercise of their equity jurisdiction, may, by injunction, compel the observance of, and by that remedy enforce, the provisions of the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753 and the rules and regulations established and promulgated by the Department of Agriculture.

Source: Laws 1927, c. 12, art. VIII, § 14, p. 95; C.S.1929, § 54-951; R.S.1943, § 54-753; Laws 2001, LB 438, § 19; Laws 2006, LB 856, § 24; Laws 2014, LB884, § 12. Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-753.06 Transferred to section 54-7,109.

(f) IMPORT CONTROL

54-784.01 Act, how cited.

Sections 54-784.01 to 54-796 shall be known and may be cited as the Animal Importation Act.

Source: Laws 1992, LB 366, § 13; Laws 2013, LB647, § 1.

54-789 Individual identification of cattle; Department of Agriculture; powers; State Veterinarian; powers.

(1) Except as otherwise provided in this section, individual identification of cattle imported into Nebraska shall not be required if (a) the cattle are identified by a registered brand and accompanied by an official brand inspection certificate issued by the recognized brand inspection authority of the state of origin and (b) such cattle are imported directly from a mandatory brand inspection area of any state.

(2) The Department of Agriculture may require cattle imported into Nebraska to be identified by individual identification to enter the state if the Director of Agriculture determines that:

(a) The state of origin recognized brand registration or brand inspection procedures and documentation are insufficient to enable the tracing of individual animals to the animal's herd of origin;

(b) Identification by brand alone is in conflict with a standard of federal law or regulation regarding identification of cattle moved into Nebraska; or

(c) The cattle originate from a location that is not a tuberculosis accredited-free state or zone pursuant to 9 C.F.R. 77.7 or is not designated a brucellosis Class Free or Class A state or area pursuant to 9 C.F.R. 78.41, as such regulations existed on January 1, 2013.

(3) At no time shall a registered brand inspection certificate be used in lieu of a certificate of veterinary inspection.

(4) This section does not limit the authority of the State Veterinarian to issue import orders imposing additional requirements for animals imported into Nebraska from any state, country, zone, or other area, including requirements relating to identification.

(5) For purposes of this section:

(a) Individual identification means a device or method approved by the Department of Agriculture of uniquely identifying a specific animal to its herd of origin and is not synonymous with official identification; and

(b) Official identification means identifying an animal or group of animals using devices or methods approved by the Veterinary Services Office of the Animal and Plant Health Inspection Service of the United States Department of Agriculture, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

Source: Laws 2013, LB647, § 2.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

54-7,105 Act, how cited; purpose of sections.

(1) Sections 54-7,105 to 54-7,110 shall be known and may be cited as the Exotic Animal Auction or Exchange Venue Act.

(2) The purpose of the Exotic Animal Auction or Exchange Venue Act is to require an exotic animal auction or exchange venue organizer to obtain a permit from the department before conducting an exotic animal auction or exchange venue and to maintain records for animal disease tracking purposes. Exotic animals sold at an exotic animal auction or exchange venue are often foreign to the United States or to the State of Nebraska. These exotic animals may carry dangerous, infectious, contagious, or otherwise transmissible dis-

eases, including foreign animal diseases, which could pose a threat to Nebraska's livestock health and the livestock industry.

Source: Laws 2006, LB 856, § 6; Laws 2014, LB884, § 13.
Effective date July 18, 2014.

Cross References

Definitions, see section 54-701.03.

Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.

Violations, penalties, see section 54-752.

54-7,105.01 Terms, defined.

For purposes of the Exotic Animal Auction or Exchange Venue Act:

- (1) Accredited veterinarian has the same meaning as in section 54-701.03;
- (2) Animal has the same meaning as in section 54-701.03;
- (3) Animal welfare organization has the same meaning as in section 54-2503;
- (4) Certificate of veterinary inspection means a legible document approved by the department, either paper copy or electronic, issued by an accredited veterinarian at the point of origin of an animal movement which records the (a) name and address of both consignor and consignee, (b) purpose of animal's movement, (c) destination in the state which includes the street address or enhanced-911 address of the premises, (d) age, breed, sex, and number of animals in the shipment, (e) description of the animals, (f) individual identification, when required, and (g) health examination date of the animals. The certificate of veterinary inspection is an acknowledgment by the accredited veterinarian of the apparent absence of any infectious, dangerous, contagious, or otherwise transmissible disease of any animal sold or offered for sale, purchased, bartered, or other change of ownership at an exotic animal auction or exchange venue;
- (5) Change of ownership means the transfer within the State of Nebraska of possession or control of an animal allowed to be transferred through consignment, sale, purchase, barter, lease, exchange, trade, gift, or any other transfer of possession or control at an exotic animal auction or exchange venue;
- (6) Dangerous disease has the same meaning as in section 54-701.03;
- (7) Department means the Department of Agriculture of the State of Nebraska;
- (8) Domesticated cervine animal has the same meaning as in section 54-701.03;
- (9) Exotic animal means any animal which is not commonly sold through licensed livestock auction markets pursuant to the Livestock Auction Market Act. Such animals shall include, but not be limited to, miniature cattle (bovine), miniature horses, miniature donkeys, sheep (ovine), goats (caprine), alpacas (camelid), llamas (camelid), pot-bellied pigs (porcine), and small mammals, with the exception of cats of the *Felis domesticus* species and dogs of the *Canis familiaris* species. The term also includes birds and poultry. The term does not include beef and dairy cattle, calves, swine, bison, or domesticated cervine animals;
- (10) Exotic animal auction or exchange venue means any event or location, other than a livestock auction market as defined in section 54-1158 or events by an animal welfare organization or at an animal welfare organization location, where (a) an exotic animal is consigned, purchased, sold, traded, bartered,

given away, or otherwise transferred, (b) an offer to purchase an exotic animal is made, (c) an exotic animal is offered to be consigned, sold, traded, bartered, given away, or otherwise transferred, or (d) any other event or location where there is a change of ownership of an exotic animal;

(11) Exotic animal auction or exchange venue organizer means a person in charge of organizing an exotic animal auction or exchange venue event, and may include any person who: (a) Arranges events for third parties to have private sales or trades of exotic animals; (b) organizes or coordinates exotic animal auctions or exchange venues; (c) leases out areas for exotic animal auctions or exchange venues; (d) provides or coordinates other similar arrangements involving exotic animals at retail establishments such as feed and supply stores, farm implement stores, and farm and ranch stores, which allow such sales in or on the premises; or (e) takes exotic animals for consignment on behalf of third parties;

(12) Officially identified means the application of an official identification device or method approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services; and

(13) Poultry has the same meaning as in section 54-701.03.

Source: Laws 2014, LB884, § 14.

Effective date July 18, 2014.

Cross References

Livestock Auction Market Act, see section 54-1156.

54-7,106 Permit; notification requirements; application; denial; grounds; prohibited acts.

(1) Each exotic animal auction or exchange venue organizer shall apply for a permit and notify the department at least thirty days prior to the date on which the exotic animal auction or exchange venue is to be held. An applicant for a permit shall verify upon the application that the applicant has contracted the services of an accredited veterinarian to be present during the exotic animal auction or exchange venue as required under subsection (4) of section 54-7,108. Notification shall include the location, time, and dates of the exotic animal auction or exchange venue and the name and address of the exotic animal auction or exchange venue organizer. Notification shall be made in writing or by facsimile transmission. If a livestock auction market holds an exotic animal auction or exchange venue through its licensed livestock auction market, such livestock auction market shall comply with the Exotic Animal Auction or Exchange Venue Act for purposes of the exotic animal auction or exchange venue.

(2) The department may deny an application for a permit if the application does not satisfy the requirements of subsection (1) of this section, for previous acts or omissions of the applicant in noncompliance with the Exotic Animal Auction or Exchange Venue Act, or upon a determination that the applicant is unable to fulfill the duties and responsibilities of a permittee under the act.

(3) No person shall conduct an exotic animal auction or exchange venue without a permit issued pursuant to this section.

(4) No change of ownership of bovine, camelid, caprine, ovine, or porcine animals may occur at private treaty on the premises where the exotic animal auction or exchange venue is being held for the twenty-four-hour period prior

to commencement of the exotic animal auction or exchange venue, nor for twenty-four hours following such event, unless such animals have a certificate of veterinary inspection at change of ownership.

Source: Laws 2006, LB 856, § 7; Laws 2014, LB884, § 15.
Effective date July 18, 2014.

Cross References

Definitions, see section 54-701.03.

Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.

Violations, penalties, see section 54-752.

54-7,107 Records; contents; access by department.

(1) An exotic animal auction or exchange venue organizer shall maintain records for each exotic animal auction or exchange venue such organizer arranges, organizes, leases areas for, consigns, or otherwise coordinates at least five years after the date of the exotic animal auction or exchange venue. The records shall include:

(a) The name, address, and telephone number of the exotic animal auction or exchange venue organizer;

(b) The name and address of all persons who purchased, sold, traded, bartered, gave away, or otherwise transferred an exotic animal at the exotic animal auction or exchange venue;

(c) The number of and species or type of each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or exchange venue;

(d) The date of purchase, sale, trade, barter, or other transfer of an exotic animal at the exotic animal auction or exchange venue; and

(e) When required by the Animal Importation Act or the Exotic Animal Auction or Exchange Venue Act, a copy of the completed certificate of veterinary inspection for each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or exchange venue.

(2) An exotic animal auction or exchange venue organizer shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his or her exotic animal auction or exchange venue business.

(3) When necessary for the enforcement of the Exotic Animal Auction or Exchange Venue Act or any rules and regulations adopted and promulgated pursuant to such act, the authorized employees and agents of the department may access the records required by this section.

Source: Laws 2006, LB 856, § 8; Laws 2014, LB884, § 16.
Effective date July 18, 2014.

Cross References

Animal Importation Act, see section 54-784.01.

Definitions, see section 54-701.03.

Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.

Violations, penalties, see section 54-752.

54-7,108 Prohibited transfers; certificate of veterinary inspection; duties of exotic animal auction or exchange venue organizer; requirements for certain animals.

(1) No beef or dairy cattle, calves, swine, bison, or domesticated cervine animals shall be, or offered to be, consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue.

(2) An exotic animal auction or exchange venue organizer shall contact the department if a particular animal cannot be readily identified as an animal that is prohibited from being consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue under this section.

(3) No bovine, camelid, caprine, ovine, or porcine animal shall be, or be offered to be, consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue unless, prior to a change of ownership or other transfer of the animal, a completed certificate of veterinary inspection for such animal is presented to the exotic animal auction or exchange venue organizer. Such certificate of veterinary inspection shall be signed by an accredited veterinarian on the date of or no more than thirty days prior to the date the exotic animal auction or exchange venue is held.

(4) An exotic animal auction or exchange venue organizer shall contract with an accredited veterinarian to be present during the exotic animal auction or exchange venue for visually inspecting such exotic animals and to issue necessary certificates of veterinary inspection for change of ownership when required by the Animal Importation Act or the Exotic Animal Auction or Exchange Venue Act.

(5) All dairy goats imported into Nebraska shall have an official tuberculin test prior to import into Nebraska. All sheep and goats shall have official identification as required under the Scrapie Control and Eradication Act.

(6) A copy of the certificate of veterinary inspection shall be submitted to the department by the exotic animal auction or exchange venue organizer within seven days from the date the exotic animal auction or exchange venue was held.

(7) Any bovine, camelid, caprine, ovine, or porcine animal which is not prohibited from transfer at an exotic animal auction or exchange venue shall be officially identified prior to change of ownership.

Source: Laws 2006, LB 856, § 9; Laws 2014, LB884, § 17.
Effective date July 18, 2014.

Cross References

Animal Importation Act, see section 54-784.01.

Definitions, see section 54-701.03.

Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.

Scrapie Control and Eradication Act, see section 54-2701.

Violations, penalties, see section 54-752.

54-7,109 Compliance with game laws required.

Compliance with the Exotic Animal Auction or Exchange Venue Act does not relieve a person of the requirement to comply with the provisions of sections 37-477 to 37-479.

Source: Laws 2006, LB 856, § 10; R.S.1943, (2010), § 54-753.06; Laws 2014, LB884, § 18.
Effective date July 18, 2014.

54-7,110 Act; enforcement; rules and regulations; penalties.

(1) The Exotic Animal Auction or Exchange Venue Act shall be enforced by the department as provided in sections 54-703 to 54-705.

(2) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of the act. The rules and regulations may include, but are not limited to, provisions governing record keeping and any other requirements necessary for the enforcement of the act.

(3) Penalties and remedies for violations of the act and any rules and regulations adopted and promulgated pursuant to the act are in sections 54-751 to 54-753.

Source: Laws 2014, LB884, § 19.
Effective date July 18, 2014.

ARTICLE 8 COMMERCIAL FEED

Section

54-857. Commercial Feed Administration Cash Fund; created; use; investment.

54-857 Commercial Feed Administration Cash Fund; created; use; investment.

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act, to provide resources to prepare the Nebraska dairy industry report as provided in section 2-3993, and to aid in defraying the expenses related to a cooperative agreement with the United States Department of Agriculture Market News reporting program. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3; Laws 2009, First Spec. Sess., LB3, § 29; Laws 2011, LB305, § 1; Laws 2012, LB782, § 83; Laws 2014, LB941, § 2.
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 9 LIVESTOCK ANIMAL WELFARE ACT

Section

54-901. Act, how cited.

54-902. Terms, defined.

54-905. Court order for reimbursement of expenses; liability for expenses; lien.

54-906. Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; custody agreement; law enforcement officer; powers; duties; liability.

Section

54-913. Livestock animal seized; hearing to determine disposition and cost; notice; court order; appeal; euthanasia.

54-901 Act, how cited.

Sections 54-901 to 54-913 shall be known and may be cited as the Livestock Animal Welfare Act.

Source: Laws 2010, LB865, § 1; Laws 2013, LB423, § 5.

54-902 Terms, defined.

For purposes of the Livestock Animal Welfare Act:

(1) Abandon means to leave a livestock animal in one's care, whether as owner or custodian, for any length of time without making effective provision for the livestock animal's feed, water, or other care as is reasonably necessary for the livestock animal's health;

(2) Animal welfare practice means veterinarian practices and animal husbandry practices common to the livestock animal industry, including transport of livestock animals from one location to another;

(3) Bovine means a cow, an ox, or a bison;

(4) Cruelly mistreat means to knowingly and intentionally kill or cause physical harm to a livestock animal in a manner that is not consistent with animal welfare practices;

(5) Cruelly neglect means to fail to provide a livestock animal in one's care, whether as owner or custodian, with feed, water, or other care as is reasonably necessary for the livestock animal's health;

(6) Equine means a horse, pony, donkey, mule, or hinny;

(7) Euthanasia means the destruction of a livestock animal by commonly accepted veterinary practices;

(8) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local laws, rules, regulations, or ordinances;

(9) Livestock animal means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, llamas, or poultry;

(10) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person; and

(11) Serious injury or illness includes any injury or illness to any livestock animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

Source: Laws 2010, LB865, § 2; Laws 2013, LB423, § 6.

54-905 Court order for reimbursement of expenses; liability for expenses; lien.

(1) In addition to any other sentence given for a violation of section 54-903 or 54-904, the sentencing court may order the defendant to reimburse a public or private agency for any unreimbursed expenses incurred in conjunction with the

care, seizure, or disposal of a livestock animal involved in the violation of such section. Whenever the court believes that such reimbursement is a proper sentence or at the prosecuting attorney's request, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all expenses incurred by a public or private agency in conjunction with the care, seizure, or disposal of a livestock animal. The expenses shall be a lien upon the livestock animal.

Source: Laws 2010, LB865, § 5; Laws 2013, LB423, § 7.

54-906 Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; custody agreement; law enforcement officer; powers; duties; liability.

(1) A law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the livestock animal.

(2) A law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.

(3) A law enforcement officer may specify in a custody agreement the terms and conditions by which the owner or custodian may maintain custody of the livestock animal to provide care for such animal at the expense of the owner or custodian. The custody agreement shall be signed by the owner or custodian of the livestock animal. A copy of the signed agreement shall be provided to the owner or custodian of the livestock animal. A violation of the custody agreement may result in the seizure of the livestock animal.

(4) Any equipment, device, or other property or things involved in a violation of section 54-903 or 54-904 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any livestock animal involved in a violation of section 54-903 or 54-904 shall be subject to seizure. Distribution or disposition shall be made under section 54-913 as the court may direct. Any livestock animal seized under this subsection may be kept by the law enforcement officer on the property of the owner or custodian of such livestock animal.

(5) A law enforcement officer may euthanize or cause a livestock animal seized or kept pursuant to this section to be euthanized if the animal is severely emaciated, injured, disabled, or diseased past recovery for any useful purpose. The law enforcement officer shall notify the owner or custodian prior to the euthanasia if practicable under the circumstances. An owner or custodian may request that a veterinarian of the owner's or custodian's choosing view the livestock animal and be present upon examination of the livestock animal, and no livestock animal shall be euthanized without reasonable accommodation to provide for the presence of the owner's or custodian's veterinarian when requested. However, attempted notification of the owner or custodian or the presence of the owner's or custodian's veterinarian shall not unduly delay

euthanasia when necessary. The law enforcement officer may forgo euthanasia if the care of the livestock animal is placed with the owner's or custodian's veterinarian.

(6) A law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 2010, LB865, § 6; Laws 2013, LB423, § 8.

54-913 Livestock animal seized; hearing to determine disposition and cost; notice; court order; appeal; euthanasia.

(1) After a livestock animal has been seized, the agency that took custody of the livestock animal shall, within seven days after the date of seizure, file a complaint with the district court in the county in which the animal was seized for a hearing to determine the disposition and the cost for the care of the livestock animal. Notice of such hearing shall be given to the owner or custodian from whom such livestock animal was seized and to any holder of a lien or security interest of record in such livestock animal, specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such livestock animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(2) If the court finds that probable cause exists that the livestock animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the livestock animal to the agency that took custody of the livestock animal and authorize appropriate disposition of the livestock animal, including sale at public auction, adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. With respect to sale of a livestock animal, the proceeds shall first be applied to the cost of sale and then to the expenses for the care of the livestock animal and the remaining proceeds, if any, shall be paid to the holder of a lien or security interest of record in such livestock animal and then to the owner of the livestock animal;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the livestock animal shall be returned to the owner or custodian from whom the livestock animal was seized or to any other person claiming an interest in the livestock animal. Such order may include any management actions deemed necessary and prudent by the court, including culling by sale, humane disposal, or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining livestock animal; or

(c) Order the owner or custodian from whom the livestock animal was seized to post a bond or other security, or to otherwise order payment, in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the livestock animal, including veterinary care, incurred by the agency from the date of seizure and necessitated by the possession of the livestock animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent succeeding thirty-day period, if any, shall be due on or

before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the livestock animal. The agency shall provide an accounting of expenses to the court when the livestock animal is no longer in the custody of the agency or upon request by the court. The agency may petition the court for a subsequent hearing under this subsection at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted or if a person becomes delinquent in his or her payments for the expenses of the livestock animal, the livestock animal shall be forfeited to the agency.

(3) If custody of a livestock animal is returned to the owner or custodian of the livestock animal prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the livestock animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(4) Nothing in this section shall prevent the euthanasia of a seized livestock animal at any time as determined necessary by a law enforcement officer or as authorized by court order.

(5) An appeal may be entered within ten days after a hearing under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the livestock animal for thirty days. Such payment will be required for each succeeding thirty-day period until the appeal is final.

(6) If the owner or custodian from whom the livestock animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the livestock animal remaining after the actual expenses incurred by the agency have been paid shall be returned to such person.

(7) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

Source: Laws 2013, LB423, § 9.

ARTICLE 11

LIVESTOCK AUCTION MARKET ACT

Section

- 54-1156. Act, how cited.
- 54-1158. Terms, defined.
- 54-1159. Exemptions from act.
- 54-1160. Repealed. Laws 2013, LB 78, § 23.
- 54-1160.01. Brand inspection.
- 54-1161. License required; application for license; contents.
- 54-1162. Hearing; notice.
- 54-1163. Hearing; determination; factors; issuance of license.
- 54-1165. License fee; payments; disposition.
- 54-1166. Livestock auction markets; license personal to holder; transfer; posting; termination.
- 54-1168. Records required; available for inspection.
- 54-1169. Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.
- 54-1170. Director; audio recording; appeal; procedure.
- 54-1172. Livestock Auction Market Fund; creation; use; investment.

Section

- 54-1173. Livestock Auction Market Fund; license and permit fees; occupation tax; use.
- 54-1174. Repealed. Laws 2014, LB 884, § 34.
- 54-1177. Repealed. Laws 2014, LB 884, § 34.
- 54-1180. Inspection of livestock; duties; fees; use; disposition; notice of change.
- 54-1181. Veterinarians; agreement for services; contents; compensation; liability.
- 54-1182. Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.
- 54-1183. Transferred to section 54-1,129.
- 54-1184. Transferred to section 54-1,130.
- 54-1185. Transferred to section 54-1,131.

54-1156 Act, how cited.

Sections 54-1156 to 54-1182 shall be known and may be cited as the Livestock Auction Market Act.

Source: Laws 1963, c. 319, § 32, p. 973; Laws 1985, LB 97, § 3; R.S.1943, (1998), § 54-1186; Laws 1999, LB 778, § 78; Laws 2001, LB 197, § 5; Laws 2014, LB884, § 20.
Effective date July 18, 2014.

54-1158 Terms, defined.

As used in the Livestock Auction Market Act, unless the context otherwise requires:

- (1) Accredited veterinarian has the same meaning as in section 54-701.03;
- (2) Department means the Department of Agriculture;
- (3) Designated veterinarian means an accredited veterinarian who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation whether such livestock is moved in interstate or intrastate commerce;
- (4) Director means the Director of Agriculture;
- (5) Livestock means cattle, calves, swine, sheep, and goats;
- (6) Livestock auction market means any place, establishment, or facility commonly known as a livestock auction market, sales ring, or the like, conducted or operated for compensation as an auction market for livestock, consisting of pens or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment;
- (7) Livestock auction market operator means any person engaged in the business of conducting or operating a livestock auction market, whether personally or through agents or employees;
- (8) Market license means the license for a livestock auction market authorized to be issued under the act;
- (9) Person means any individual, firm, association, partnership, limited liability company, or corporation; and
- (10) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the director.

Source: Laws 1963, c. 319, § 2, p. 962; Laws 1993, LB 121, § 340; Laws 1999, LB 778, § 63; Laws 2001, LB 197, § 7; Laws 2013, LB78, § 1; Laws 2014, LB884, § 21.
Effective date July 18, 2014.

54-1159 Exemptions from act.

(1) The Livestock Auction Market Act shall not be construed to include:

(a) Any place or operation where Future Farmers of America, 4-H groups, or private fairs conduct sales of livestock;

(b) An animal welfare organization as defined in section 54-2503;

(c) Any place or operation conducted for a dispersal sale of the livestock of farmers, dairypersons, or livestock breeders or feeders, where no other livestock is sold or offered for sale; or

(d) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock, when such breeders assume all responsibility of such sale and the title of livestock sold. This shall apply to all purebred livestock association sales.

(2) An exotic animal auction or exchange venue or an exotic animal auction or exchange venue organizer as defined in section 54-7,105.01 is not required to be licensed under the Livestock Auction Market Act if any bovine, camelid, caprine, ovine, or porcine allowed to be sold under the Exotic Animal Auction or Exchange Venue Act are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian and the exotic animal auction or exchange venue organizer contracts for the services of an accredited veterinarian to issue such certificates onsite during the auction or exchange venue for bovine, camelid, caprine, ovine, or porcine present.

Source: Laws 1963, c. 319, § 3, p. 962; Laws 1999, LB 778, § 64; Laws 2001, LB 197, § 8; Laws 2014, LB884, § 22.
Effective date July 18, 2014.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-1160 Repealed. Laws 2013, LB 78, § 23.**54-1160.01 Brand inspection.**

The owner or operator of any livestock auction market located in any county outside the brand inspection area created in section 54-1,109 may voluntarily elect to provide brand inspection as provided in sections 54-1,129 to 54-1,131.

Source: Laws 2014, LB884, § 23.
Effective date July 18, 2014.

54-1161 License required; application for license; contents.

No person shall conduct or operate a livestock auction market unless he or she holds a market license therefor, upon which the current annual market license fee has been paid. Any person making application for a new market license shall do so to the director in writing, verified by the applicant, on a form prescribed by the department, showing the following:

(1) The name and address of the applicant with a statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest;

(2) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(3) A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such livestock auction market;

(4) The schedule of charges an applicant proposes for all services proposed to be rendered; and

(5) A detailed statement of the facts upon which the applicant relies showing the general confines of the trade area proposed to be served by such livestock auction market, the benefits to be derived by the livestock industry, and the services proposed to be rendered.

Such application shall be accompanied by the annual fee as prescribed in section 54-1165.

Source: Laws 1963, c. 319, § 5, p. 964; Laws 1997, LB 752, § 134; Laws 2013, LB78, § 2; Laws 2014, LB884, § 24.

Effective date July 18, 2014.

54-1162 Hearing; notice.

Upon the filing of the application as provided in section 54-1161, the director shall fix a reasonable time for the hearing at a place designated by him or her at which time a hearing shall be held on the proposed location of the livestock auction market. The director forthwith shall cause a copy of such application, together with notice of the time and place of hearing, to be served by mail not less than fifteen days prior to such hearing, upon the following:

(1) All duly organized statewide livestock associations in the state who have filed written requests with the department to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application; and

(2) All livestock auction market operators in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or village where such hearing is to be held, as in the opinion of the director will give reasonable public notice of such time and place of hearing to persons interested therein.

Source: Laws 1963, c. 319, § 6, p. 964; Laws 2001, LB 197, § 10; Laws 2013, LB78, § 3.

54-1163 Hearing; determination; factors; issuance of license.

The hearing required by section 54-1162 shall be heard by the director. If the director determines, after such hearing, that the proposed livestock auction market would beneficially serve the livestock economy, the department shall issue a market license to the applicant. In determining whether or not the application should be granted or denied, reasonable consideration shall be given to:

(1) The ability of the applicant to comply with the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended;

(2) The financial stability, business integrity, and fiduciary responsibility of the applicant;

(3) The adequacy of the facilities described to permit the performance of market services proposed in the application;

(4) The present needs for market services or additional services as expressed by livestock growers and feeders in the community; and

(5) Whether the proposed livestock auction market would be permanent and continuous.

Source: Laws 1963, c. 319, § 7, p. 965; Laws 1999, LB 778, § 66; Laws 2013, LB78, § 4; Laws 2014, LB884, § 25.
Effective date July 18, 2014.

54-1165 License fee; payments; disposition.

Every livestock auction market operator shall pay annually, on or before August 1, a market license fee of one hundred fifty dollars to the department for each livestock auction market operated by him or her, which payment shall constitute a renewal for one year. Fees so paid shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund for the expenses of administration of the Livestock Auction Market Act.

Source: Laws 1963, c. 319, § 9, p. 966; Laws 1983, LB 617, § 9; Laws 1999, LB 778, § 67; Laws 2001, LB 197, § 11; Laws 2013, LB78, § 5.

54-1166 Livestock auction markets; license personal to holder; transfer; posting; termination.

Except as otherwise provided in this section, each market license shall be personal to the holder and the facilities covered thereby and transferable without a hearing. The original or a certified copy of such license shall be posted during sale periods in a conspicuous place on the premises where the livestock auction market is conducted. The market license covering any livestock auction market which does not hold a sale for a period of one year shall terminate automatically one year from the date of the last sale conducted by the livestock auction market, and the license holder whose license is so terminated may request a hearing by filing a written request for such hearing within twenty days after the termination of the license.

Source: Laws 1963, c. 319, § 10, p. 966; Laws 1985, LB 97, § 2; Laws 2014, LB884, § 26.
Effective date July 18, 2014.

54-1168 Records required; available for inspection.

Every market license holder under the Livestock Auction Market Act shall keep an accurate record of all transactions conducted in the ordinary course of his or her business. Such records shall be available for examination of the director, or his or her duly authorized representative, in respect to a market license issued under such act.

Source: Laws 1963, c. 319, § 12, p. 966; Laws 1999, LB 778, § 68; Laws 2001, LB 197, § 12; Laws 2013, LB78, § 6.

54-1169 Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.

(1) The department may, upon its own motion, whenever it has reason to believe the Livestock Auction Market Act has been violated, or upon verified complaint of any person in writing, investigate the actions of any market

license holder, and if the department finds probable cause to do so, shall file a complaint against the market license holder which shall be set down for hearing before the director upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail prior to such hearing.

(2) The director shall have the power to administer oaths, certify to all official acts, and subpoena any person in this state as a witness, to compel the producing of books and papers, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness who shall appear by the order of the director at any hearing shall receive for such attendance the same fees allowed by law to witnesses in civil cases appearing in the district court and mileage at the same rate provided in section 81-1176, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but has been subpoenaed by the director, his or her fees and mileage shall be paid by the director in the same manner as other expenses are paid under the Livestock Auction Market Act.

(3) All powers of the director as provided in this section shall likewise be applicable to hearings held on applications for the issuance of a market license.

(4) Formal finding by the director after due hearing that any market license holder (a) has ceased to conduct a livestock auction market business, (b) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock, (c) has violated any of the provisions of the Livestock Auction Market Act, or (d) has violated any of the rules or regulations adopted and promulgated under the act, shall be sufficient cause for the suspension or revocation of the market license of the offending livestock auction market operator.

Source: Laws 1963, c. 319, § 13, p. 966; Laws 1981, LB 204, § 95; Laws 1999, LB 778, § 69; Laws 2001, LB 197, § 13; Laws 2013, LB78, § 7; Laws 2014, LB884, § 27.
Effective date July 18, 2014.

54-1170 Director; audio recording; appeal; procedure.

The director shall keep an audio recording of all proceedings and evidence presented in any hearing under the Livestock Auction Market Act. The applicant for a market license, any protestant formally appearing in the hearing for such market license, the holder of any market license suspended or revoked, or any party to a transfer application may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1963, c. 319, § 14, p. 968; Laws 1988, LB 352, § 95; Laws 2013, LB78, § 8; Laws 2014, LB884, § 28.
Effective date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

54-1172 Livestock Auction Market Fund; creation; use; investment.

Salaries and expenses of employees, costs of hearings, and all other costs of administration of the Livestock Auction Market Act shall be paid from the Livestock Auction Market Fund which is hereby created. Any money in the Livestock Auction Market Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 319, § 16, p. 969; Laws 1999, LB 778, § 71; Laws 2001, LB 197, § 15; Laws 2013, LB78, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

54-1173 Livestock Auction Market Fund; license and permit fees; occupation tax; use.

The license and permit fees collected as provided by the Livestock Auction Market Act are an occupation tax and shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering such act and shall be paid out only on vouchers approved by the director and upon the warrant or warrants issued by the Director of Administrative Services. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium.

Source: Laws 1963, c. 319, § 17, p. 969; Laws 1969, c. 584, § 54, p. 2379; Laws 1995, LB 7, § 58; Laws 1999, LB 778, § 72; Laws 2001, LB 197, § 16; Laws 2014, LB884, § 29.
Effective date July 18, 2014.

54-1174 Repealed. Laws 2014, LB 884, § 34.

54-1177 Repealed. Laws 2014, LB 884, § 34.

54-1180 Inspection of livestock; duties; fees; use; disposition; notice of change.

All cattle, calves, swine, sheep, and goats, upon entering a livestock auction market, shall be inspected for health before being offered for sale. Such inspection shall be made by a designated veterinarian. The fees for such inspection shall be established by rules and regulations of the department and shall be collected by the operator of the livestock auction market. Such fees shall be used to pay the fees of necessary inspections and for no other purpose and shall be remitted as may be provided by regulation. The fees shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund and shall be expended exclusively to pay the fees of providing necessary inspections at the livestock auction market which has remitted such fees. Each designated veterinarian making market inspections shall be paid twenty-five dollars for each regularly scheduled sale day in each calendar month as a guaranteed minimum salary for providing adequate inspection services. If the fees collected each calendar month by the market operator do not equal such amount, the market operator shall make up the difference in his or her remittance to the state. The rules and regulations establishing fees for such inspection shall not be adopted, amended, or repealed until after notice by mail to each market licensee and designated veterinarian of the time and place of

hearing on the question of adoption, amendment, or repeal of such rules and regulations; such notice shall be mailed at least ten days prior to the date of hearing and shall be sufficient if addressed to the last-known address of each market licensee and designated veterinarian shown on the records of the department.

Source: Laws 1963, c. 319, § 24, p. 971; Laws 1965, c. 334, § 5, p. 956; Laws 1969, c. 454, § 1, p. 1543; Laws 2001, LB 197, § 20; Laws 2014, LB884, § 30.
Effective date July 18, 2014.

54-1181 Veterinarians; agreement for services; contents; compensation; liability.

The State Veterinarian shall make the designation of the veterinarians required by sections 54-1180 and 54-1182 by entering into an agreement with any accredited veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause and shall further provide that the state pay such veterinarian a fee as established by section 54-1180, which amount shall be paid monthly from the Livestock Auction Market Fund. Such agreement shall make the designated veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1180 and 54-1182, and the rules and regulations prescribed by the department, but shall not be deemed to make the designated veterinarian an officer or employee of the state. The orders of such designated veterinarian, issued in the performance of the duties assigned under sections 54-1180 and 54-1182 and the rules and regulations prescribed by the department, shall have the same force and effect as though such order had been made by the State Veterinarian. Designated veterinarians shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1180 and 54-1182 and the rules and regulations prescribed by the department pursuant to such sections.

Source: Laws 1963, c. 319, § 25, p. 971; Laws 1965, c. 334, § 6, p. 957; Laws 1969, c. 454, § 2, p. 1544; Laws 2001, LB 197, § 21; Laws 2014, LB884, § 31.
Effective date July 18, 2014.

54-1182 Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.

Any livestock sold or disposed of at a livestock auction market, before removal therefrom, shall be released by the designated veterinarian and treated to conform with the health requirements of the rules and regulations prescribed by the department for the movement of livestock. When required, the designated veterinarian shall furnish each owner with documentation showing such inspection, treatment, or quarantine. No such livestock for interstate or intrastate shipment shall be released until all the requirements of the state of its destination have been complied with. Any diseased or exposed livestock shall be handled in accordance with the rules and regulations as prescribed by the department.

Source: Laws 1963, c. 319, § 26, p. 972; Laws 1965, c. 334, § 7, p. 957; Laws 1999, LB 778, § 75; Laws 2001, LB 197, § 22; Laws 2003, LB 160, § 8; Laws 2014, LB884, § 32.
Effective date July 18, 2014.

54-1183 Transferred to section 54-1,129.

54-1184 Transferred to section 54-1,130.

54-1185 Transferred to section 54-1,131.

ARTICLE 19

MEAT AND POULTRY INSPECTION

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

Section

54-1916. Repealed. Laws 2012, LB 782, § 253.

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

54-1916 Repealed. Laws 2012, LB 782, § 253.

ARTICLE 24

LIVESTOCK WASTE MANAGEMENT ACT

Section

54-2428. National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.

54-2428 National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.

(1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure

facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Livestock Waste Management Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) On or before January 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

Source: Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10; R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17; Laws 2006, LB 975, § 10; Laws 2009, First Spec. Sess., LB3, § 30; Laws 2012, LB782, § 84.

Cross References

Environmental Protection Act, see section 81-1532.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.



CHAPTER 55

MILITIA

Article.

1. Military Code. 55-120 to 55-157.

ARTICLE 1

MILITARY CODE

Section

- 55-120. National Guard; Military Department; officers; personnel; rank.
 55-125. Adjutant General; assistants; qualifications.
 55-126. Adjutant General; assistants; duties; bond or insurance; salary.
 55-157. Militia; active duty; personnel; compensation; travel expenses; health insurance reimbursement.

55-120 National Guard; Military Department; officers; personnel; rank.

The Military Department shall consist of the Adjutant General in the minimum grade of lieutenant colonel, one deputy adjutant general with a minimum grade of colonel, or a civilian deputy director, one assistant director for Nebraska Emergency Management Agency affairs, and such other officers and enlisted personnel in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized.

Source: Laws 1917, c. 205, § 3, p. 483; Laws 1919, c. 121, § 1, p. 288; C.S.1922, § 3304; Laws 1929, c. 189, § 19, p. 661; C.S.1929, § 55-124; R.S.1943, § 55-139; Laws 1953, c. 188, § 17, p. 598; Laws 1963, c. 321, § 2, p. 975; R.R.S.1943, § 55-139; Laws 1969, c. 459, § 18, p. 1587; Laws 1974, LB 983, § 3; Laws 1996, LB 43, § 10; Laws 2010, LB550, § 2; Laws 2014, LB806, § 1.
 Effective date July 18, 2014.

55-125 Adjutant General; assistants; qualifications.

(1) The Adjutant General shall appoint a deputy adjutant general or a civilian deputy director. An officer appointed as a deputy adjutant general shall hold the minimum grade of colonel as provided in section 55-120. No person shall be eligible for appointment and service as the deputy adjutant general unless he or she is an active member of the Nebraska National Guard. The deputy adjutant general shall have had at least four years of commissioned service in the Nebraska National Guard immediately prior to appointment and shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her appointment as deputy adjutant general.

(2) The chief of the National Guard Bureau shall appoint a United States property and fiscal officer. The officer shall hold the minimum grade of colonel. The Governor shall nominate one or more officers for the position of United States property and fiscal officer after consultation with the Adjutant General. All nominees shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her nomination. The United

States property and fiscal officer may appoint, with the approval of the Adjutant General, one or more assistant United States property and fiscal officers, each with the minimum grade of captain. The United States property and fiscal officer and each assistant United States property and fiscal officer shall be appointed from among the active officers of the Nebraska National Guard and shall have been commissioned officers in the Nebraska National Guard for a period of at least four years immediately prior to appointment.

(3) The Adjutant General shall appoint all additional officers, clerks, and caretakers as may be required.

Source: Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-143; Laws 1953, c. 188, § 20, p. 600; Laws 1963, c. 321, § 3, p. 976; R.R.S.1943, § 55-143; Laws 1969, c. 459, § 23, p. 1589; Laws 1974, LB 983, § 5; Laws 1976, LB 614, § 1; Laws 2004, LB 963, § 2; Laws 2010, LB550, § 4; Laws 2014, LB806, § 2.

Effective date July 18, 2014.

55-126 Adjutant General; assistants; duties; bond or insurance; salary.

The deputy adjutant general or civilian deputy director shall aid the Adjutant General by the performance of such duties as may be assigned by the Adjutant General. In case of absence or inability of the Adjutant General, the deputy adjutant general or civilian deputy director shall perform all or such portion of the duties of the Adjutant General as the latter may expressly delegate to him or her. If the Adjutant General has appointed a civilian deputy director the Adjutant General may, in the event of the Adjutant General's absence, delegate the authority to perform the military duties of the Adjutant General to any active officer of the Nebraska National Guard who shall hold the minimum grade of colonel. In the case of absence of both the Adjutant General and the deputy adjutant general or civilian deputy director, the Adjutant General may delegate the authority to perform the military duties of the Adjutant General to any active officer of the Nebraska National Guard who shall hold the minimum grade of colonel and the Adjutant General may delegate the authority to perform state duties to any member of his or her appointed executive staff. The deputy adjutant general or civilian deputy director shall be bonded or insured as required by section 11-201. The deputy adjutant general or civilian deputy director shall receive such salary as the Adjutant General shall direct, payable biweekly. Such salary for the deputy adjutant general shall not exceed the annual pay and allowances of regular military officers of equal rank and time in service, except that when funds made available by the federal government are in excess of the amount payable as directed by the Adjutant General, the excess shall be used to reduce the amount required to be paid by the State of Nebraska. Except when called or ordered to active duty of the United States under 10 U.S.C. in support of missions authorized by the President of the United States or Secretary of Defense, the deputy adjutant general shall not be required to take either paid or unpaid leave, or a leave of absence or a reduction in salary, when performing his or her federal duties whether or not under federal orders.

Source: Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929,

§ 55-125; R.S.1943, § 55-144; Laws 1947, c. 196, § 2, p. 639; Laws 1951, c. 182, § 2, p. 685; Laws 1963, c. 321, § 4, p. 976; R.R.S.1943, § 55-144; Laws 1969, c. 459, § 24, p. 1589; Laws 1978, LB 653, § 16; Laws 1993, LB 170, § 1; Laws 2004, LB 884, § 28; Laws 2004, LB 963, § 3; Laws 2010, LB550, § 5; Laws 2014, LB806, § 3.

Effective date July 18, 2014.

55-157 Militia; active duty; personnel; compensation; travel expenses; health insurance reimbursement.

(1) When an active or retired officer or enlisted person of the National Guard is ordered to active service of the state by the Governor or Adjutant General, he or she shall receive compensation as provided in this subsection. For service during a disaster or emergency, an officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States and shall be reimbursed for travel expenses in accordance with the Joint Federal Travel Regulations. For advice, counsel, duties, or service to the Governor or Adjutant General, an officer or enlisted person may, at the discretion of the Adjutant General, be in a pay or nonpay status. If in a pay status, the officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States and shall be reimbursed for travel expenses in accordance with the Joint Federal Travel Regulations.

(2) For any period of active service of the state in excess of thirty consecutive days, performed at the order of the Governor or Adjutant General or at the request of the federal government, a state, or other agency or entity, an officer or enlisted person shall be entitled to reimbursement of one hundred percent of the cost of his or her privately purchased health insurance or up to one hundred two percent of the cost of his or her employer-provided health insurance. The officer or enlisted person shall provide evidence of payment and shall be reimbursed to the extent that evidence of payment can be provided. The reimbursement for health insurance shall be treated as an allowance but may be paid separately once received by the State of Nebraska from the federal government, a state, or other agency or entity requesting the services of the officer or enlisted person. The State of Nebraska will not pay or advance the cost of such health insurance reimbursement for the federal government, a state, or other agency or entity. The State of Nebraska is exempt from the requirement under this subsection to reimburse officers and enlisted persons for their health insurance costs.

Source: Laws 1909, c. 90, § 44, p. 380; R.S.1913, § 3943; C.S.1922, § 3343; C.S.1929, § 55-170; R.S.1943, § 55-184; Laws 1953, c. 188, § 33, p. 606; R.R.S.1943, § 55-184; Laws 1969, c. 459, § 55, p. 1599; Laws 1984, LB 934, § 5; Laws 1990, LB 930, § 2; Laws 2004, LB 963, § 4; Laws 2012, LB1141, § 1.



CHAPTER 57

MINERALS, OIL, AND GAS

Article.

7. Oil and Gas Severance Tax. 57-706.
9. Oil and Gas Conservation. 57-909.
11. Eminent Domain for Pipelines. 57-1101.
12. Uranium Severance Tax. 57-1206.
14. Major Oil Pipeline Siting Act. 57-1401 to 57-1413.
15. Oil Pipeline Projects. 57-1501 to 57-1503.

ARTICLE 7

OIL AND GAS SEVERANCE TAX

Section

57-706. Tax; security; notice; use.

57-706 Tax; security; notice; use.

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with the provisions of sections 57-701 to 57-719, may require any person subject to the tax to deposit with the Tax Commissioner suitable indemnity bond to insure payment of the taxes, levied under the provisions of sections 57-701 to 57-719, as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use thereof shall be given to such person by mail.

Source: Laws 1955, c. 219, § 6, p. 612; Laws 1957, c. 242, § 48, p. 860; Laws 1967, c. 351, § 4, p. 934; Laws 2012, LB727, § 14.

ARTICLE 9

OIL AND GAS CONSERVATION

Section

57-909. Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.

57-909 Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.

(1) When two or more separately owned tracts are embraced within a spacing unit or when there are separately owned interests in all or part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, or upon its own motion, may enter an order pooling all interests in the spacing unit for the development and operation thereof. Each such pooling order shall be made only after notice and hearing and shall be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his or her just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a

pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(2) Each such pooling order shall make provision for the drilling and operation of the authorized well on the spacing unit and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his or her share of the costs out of, and only out of, production from the unit representing his or her interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the commission shall determine the proper cost. The order shall determine the interest of each owner in the unit and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his or her share of the costs, such owner, unless he or she has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner; and as to each owner who does not agree, he or she shall be entitled to receive from the person or persons drilling and operating such well on the unit his or her share of the production applicable to his or her interest, after the person or persons drilling and operating such well have recovered, depending on the total measured depth of the well, three hundred percent for wells less than five thousand feet deep, four hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of that portion of the costs and expenses of staking, well site preparation, drilling, reworking, deepening or plugging back, testing, completing, and other intangible expenses approved by the commission chargeable to each owner who does not agree, and, depending on the total measured depth of the well, two hundred percent for wells less than five thousand feet deep, three hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of all equipment including wellhead connections, casing, tubing, packers, and other downhole equipment and surface equipment, including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation and a reasonable rate of interest on the unpaid balance. For the purpose of this section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths interest in and to such rights and a lessor to the extent of the remaining one-eighth interest therein.

(3) A certified copy of the order may be filed for record with the county clerk or register of deeds of the county, as the case may be, where the property involved is located, which recording shall constitute constructive notice thereof. The county clerk, or register of deeds, as the case may be, shall record the same in the real property records of the county and shall index the same against the property affected.

Source: Laws 1959, c. 262, § 9, p. 907; Laws 1978, LB 447, § 1; Laws 2011, LB458, § 1.

ARTICLE 11
EMINENT DOMAIN FOR PIPELINES

Section

57-1101. Acquisition of property by eminent domain; authorized; procedure.

57-1101 Acquisition of property by eminent domain; authorized; procedure.

Any person engaged in, and any company, corporation, or association formed or created for the purpose of, transporting or conveying crude oil, petroleum, gases, or other products thereof in interstate commerce through or across the State of Nebraska or intrastate within the State of Nebraska, and desiring or requiring a right-of-way or other interest in real estate and being unable to agree with the owner or lessee of any land, lot, right-of-way, or other property for the amount of compensation for the use and occupancy of so much of any lot, land, real estate, right-of-way, or other property as may be reasonably necessary for the laying, relaying, operation, and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline, shall have the right to acquire the same for such purpose through the exercise of the power of eminent domain, except that for any major oil pipeline as defined in section 57-1404 to be placed in operation in the State of Nebraska after November 23, 2011, any such person, company, corporation, or association shall comply with section 57-1503 and receive the approval of the Governor for the route of the pipeline under such section or shall apply for and receive an order approving the application under the Major Oil Pipeline Siting Act, prior to having the rights provided under this section. If condemnation procedures have not been commenced within two years after the date the Governor's approval is granted or after the date of receipt of an order approving an application under the Major Oil Pipeline Siting Act, the right under this section expires. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1963, c. 323, § 1, p. 979; Laws 2011, First Spec. Sess., LB1, § 1; Laws 2012, LB1161, § 1.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

ARTICLE 12
URANIUM SEVERANCE TAX

Section

57-1206. Tax; security; notice; use.

57-1206 Tax; security; notice; use.

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with sections 57-1201 to 57-1214, may require any person subject to the tax imposed by section 57-1202 to deposit with the Tax Commissioner a suitable indemnity bond to insure payment of the tax as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use of the bond shall be given to such person by mail.

Source: Laws 1983, LB 356, § 18; Laws 2012, LB727, § 15.

ARTICLE 14

MAJOR OIL PIPELINE SITING ACT

Section

- 57-1401. Act, how cited.
57-1402. Purposes of act.
57-1403. Legislative findings.
57-1404. Terms, defined.
57-1405. Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.
57-1406. Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.
57-1407. Commission; duties; public meetings; agency reports; approval by commission; considerations.
57-1408. Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.
57-1409. Appeal.
57-1410. Rules and regulations.
57-1411. Public Service Commission Pipeline Regulation Fund; created; use; investment.
57-1412. Commission; powers.
57-1413. Documents or records; not withheld from public.

57-1401 Act, how cited.

Sections 57-1401 to 57-1413 shall be known and may be cited as the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 2; Laws 2012, LB1161, § 2.

57-1402 Purposes of act.

(1) The purposes of the Major Oil Pipeline Siting Act are to:

- (a) Ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, and economic interests;
(b) Consider the lawful protection of Nebraska's natural resources in determining the location of routes of major oil pipelines within Nebraska;
(c) Ensure that a major oil pipeline is not constructed within Nebraska without receiving the approval of the commission under section 57-1408;
(d) Ensure that the location of routes for major oil pipelines is in compliance with Nebraska law; and
(e) Ensure that a coordinated and efficient method for the authorization of such construction is provided.

(2) Nothing in the Major Oil Pipeline Siting Act shall be construed to regulate any safety issue with respect to any aspect of any interstate oil pipeline. The Major Oil Pipeline Siting Act is intended to deal solely with the issue of siting or choosing the location of the route aside and apart from safety considerations. The Legislature acknowledges and respects the exclusive federal authority over safety issues established by the federal law, the Pipeline Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express preemption provision stated in that act. The Major Oil Pipeline Siting Act is intended to exercise only the remaining sovereign powers and purposes of Nebraska which are not included in the category of safety regulation.

Source: Laws 2011, First Spec. Sess., LB1, § 3; Laws 2012, LB1161, § 4.

57-1403 Legislative findings.

The Legislature finds that:

(1) Nebraska has the authority as a sovereign state to protect its land and natural resources for economic and aesthetic purposes for the benefit of its residents and future generations by regulation through approval or disapproval of major oil pipeline siting and the location of routes, so long as it does not regulate in the area of safety as to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of major oil pipelines and pipeline facilities;

(2) The water and other natural resources in Nebraska will become increasingly valuable, both economically and strategically, as the demand for agricultural products for both food and fuel increases;

(3) The construction of major oil pipelines in Nebraska is in the public interest of Nebraska and the nation to meet the increasing need for energy; and

(4) The irrigation economy of Nebraska which relies on quality water adds over one billion dollars annually to net farm income and increases the gross state product by three billion dollars annually.

Source: Laws 2011, First Spec. Sess., LB1, § 4.

57-1404 Terms, defined.

For purposes of the Major Oil Pipeline Siting Act:

(1) Commission means the Public Service Commission;

(2) Major oil pipeline means a pipeline which is larger than six inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means a person that engages in owning, operating, or managing a major oil pipeline.

Source: Laws 2011, First Spec. Sess., LB1, § 5; Laws 2012, LB1161, § 5.

57-1405 Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.

(1) If a pipeline carrier proposes to construct a major oil pipeline to be placed in operation in Nebraska after November 23, 2011, and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application with the commission and receive approval pursuant to section 57-1408 prior to beginning construction of the major oil pipeline within Nebraska. If a pipeline carrier proposes a substantive change to the route of a major oil pipeline and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application for the proposed change with the commission and receive approval pursuant to section 57-1408 prior to beginning construction relating to the proposed change. The applicant shall also file a copy of the application with the agencies listed in subsection (3) of section 57-1407.

(2) The application shall be accompanied by written agreement to pay expenses assessed pursuant to section 57-1406 and written testimony and exhibits in support of the application. The application shall include:

- (a) The name and address of the pipeline carrier;
- (b) A description of the nature and proposed route of the major oil pipeline and evidence of consideration of alternative routes;
- (c) A statement of the reasons for the selection of the proposed route of the major oil pipeline;
- (d) A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;
- (e) A description of the product or material to be transported through the major oil pipeline;
- (f) The person who will own the major oil pipeline;
- (g) The person who will manage the major oil pipeline;
- (h) A plan to comply with the Oil Pipeline Reclamation Act; and
- (i) A list of planned methods to minimize or mitigate the potential impacts of the major oil pipeline to land areas and connected natural resources other than with respect to oil spills.

(3) The applicant shall publish notice of the application in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed and forward a copy of such notice to the commission. The applicant shall serve notice of the application upon the governing bodies of the counties and municipalities specified pursuant to subdivision (2)(d) of this section.

Source: Laws 2011, First Spec. Sess., LB1, § 6; Laws 2012, LB1161, § 6.

Cross References

Oil Pipeline Reclamation Act, see section 76-3301.

57-1406 Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.

(1) The commission shall assess the expenses reasonably attributable to investigation and hearing regarding an application filed under section 57-1405, including expenses billed by agencies filing reports as required in subsection (3) of section 57-1407 and both direct and indirect expenses incurred by the commission or its staff or consultants, to the applicant as agreed under section 57-1405.

(2) The commission shall ascertain the expenses of any such investigation and hearing and by order assess such expenses against the applicant and shall render a bill therefor, by United States mail, to the applicant, either at the time the order under section 57-1408 is issued or from time to time during such application process. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such applicant, within fifteen days after the mailing thereof, such applicant shall pay to the commission the amount of the assessment for which it is billed. The commission shall remit the payment to the State Treasurer for credit to the Public Service Commission Pipeline Regulation Fund. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year. The commission shall direct the State Treasurer to credit any reimbursement of expenses billed

by agencies pursuant to subsection (3) of section 57-1407 to the appropriate fund of the appropriate agency.

(3) If any applicant against which an assessment has been made pursuant to this section, within fifteen days after the notice of such assessment, (a) neglects or refuses to pay the same or (b) fails to file objections to the assessment with the commission as provided in subsection (4) of this section, the commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the commission shall mail by registered mail to the applicant against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such applicant fails to pay such assessment to the State Treasurer within ten days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent per annum from and after the date on which the copy of the notice was mailed by registered mail to such applicant.

(4) Within fifteen days after the date of the mailing of any notice of assessment under subsection (2) of this section, the applicant against which such assessment has been made may file with the commission objections setting out in detail the ground upon which the applicant regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

(5) If any assessment against which objections have been filed is not paid within ten days after service of an order finding that such objections have been overruled and disallowed by the commission, the commission shall give notice of such delinquency to the State Treasurer and to the applicant in the manner provided for in subsection (3) of this section. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten days after service of the order of the commission, the commission shall notify the State Treasurer and the applicant as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

Source: Laws 2011, First Spec. Sess., LB1, § 7.

57-1407 Commission; duties; public meetings; agency reports; approval by commission; considerations.

(1) After receipt of an application under section 57-1405, the commission shall:

- (a) Within sixty days, schedule a public hearing;
- (b) Notify the pipeline carrier of the time, place, and purpose of the public hearing;
- (c) Publish a notice of the time, place, and purpose of the public hearing in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed; and

(d) Serve notice of the public hearing upon the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located as specified in subdivision (2)(d) of section 57-1405.

(2) The commission may hold additional public meetings for the purpose of receiving input from the public at locations as close as practicable to the proposed route of the major oil pipeline. The commission shall make the public input part of the record.

(3) If requested by the commission, the following agencies shall file a report with the commission, prior to the hearing on the application, regarding information within the respective agencies' area of expertise relating to the impact of the major oil pipeline on any area within the respective agencies' jurisdiction, including in such report opinions regarding the advisability of approving, denying, or modifying the location of the proposed route of the major oil pipeline: The Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Department of Roads, the Game and Parks Commission, the Nebraska Oil and Gas Conservation Commission, the Nebraska State Historical Society, the State Fire Marshal, and the Board of Educational Lands and Funds. The agencies may submit a request for reimbursement of reasonable and necessary expenses incurred for any consultants hired pursuant to this subsection.

(4) An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Public Service Commission to be in the public interest. The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest. In determining whether the pipeline carrier has met its burden, the commission shall not evaluate safety considerations, including the risk or impact of spills or leaks from the major oil pipeline, but the commission shall evaluate:

(a) Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

(b) Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources;

(c) Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

(d) Evidence regarding the economic and social impacts of the major oil pipeline;

(e) Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

(f) The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

(g) The reports of the agencies filed pursuant to subsection (3) of this section; and

(h) The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

Source: Laws 2011, First Spec. Sess., LB1, § 8.

57-1408 Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.

(1) Within seven months after the receipt of the application under section 57-1405, the commission shall enter an order approving the application or denying the application. The commission shall include in the order the findings of the commission regarding the application and the reasons for approving or denying the application. The order approving the application shall state that the application is in the public interest and shall authorize the pipeline carrier to act under section 57-1101.

(2) The commission may, for just cause, extend the time for the entry of an order under subsection (1) of this section. The extension shall not exceed twelve months after the receipt of the application under section 57-1405 unless all parties agree to a longer extension, except that no extension shall extend more than eight months after the issuance of a presidential permit authorizing the construction of the major oil pipeline.

(3) If the commission approves the application, the pipeline carrier shall file a status report with the commission regarding the construction of the major oil pipeline every six months until the completion of the major oil pipeline within Nebraska. The pipeline carrier shall notify the commission of the completion of the major oil pipeline within Nebraska within thirty days after such completion.

(4) If the commission denies the application, the pipeline carrier may amend the denied application in accordance with the findings of the commission and submit the amended application within sixty days after the issuance of the order denying the application. Within sixty days after the receipt of the amended application, the commission shall enter an order approving or denying the amended application after making new findings under subsection (4) of section 57-1407.

Source: Laws 2011, First Spec. Sess., LB1, § 9.

57-1409 Appeal.

Any party aggrieved by a final order of the commission regarding an application or assessment under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with section 75-136.

Source: Laws 2011, First Spec. Sess., LB1, § 10; Laws 2013, LB545, § 1.

57-1410 Rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 11.

57-1411 Public Service Commission Pipeline Regulation Fund; created; use; investment.

The Public Service Commission Pipeline Regulation Fund is created. The fund shall be administered by the commission. The fund shall be used by the commission to carry out the Major Oil Pipeline Siting Act. Any money in the fund available for investment shall be invested by the state investment officer

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2011, First Spec. Sess., LB1, § 12.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

57-1412 Commission; powers.

The commission may contract for professional services and expert assistance, including, but not limited to, the services of engineers, hydrogeologists, accountants, attorneys, and economists, to assist with reviewing applications under the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 13.

57-1413 Documents or records; not withheld from public.

The commission shall not withhold any documents or records relating to a major oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

Source: Laws 2012, LB1161, § 3.

ARTICLE 15

OIL PIPELINE PROJECTS

Section

57-1501. Legislative findings.

57-1502. Terms, defined.

57-1503. Evaluation of route; supplemental environmental impact statement; department; powers and duties; pipeline carrier; reimburse cost; submit to Governor; duty; denial; notice to pipeline carrier; documents or records; not withheld from public.

57-1501 Legislative findings.

The Legislature finds that:

(1) The State of Nebraska is responsible for protecting its natural resources, agricultural resources, aesthetics, economy, and communities through reasonable regulation for the common good and welfare. As such, the state is responsible for ensuring that an oil pipeline proposed to be located within, through, or across Nebraska is in compliance with all state laws, rules, and regulations relating to water, air, and wildlife under the Constitution of Nebraska and state law;

(2) Public policy should reflect this responsibility while simultaneously recognizing the necessity for energy use and the economic benefits to Nebraska of transporting oil within, through, or across the state, the need for economic development in Nebraska, and the opportunities for jobs and revenue that new development brings to the state;

(3) The United States has the important ability to work with foreign suppliers of crude oil to meet our overall energy needs and to further our national security interests; and

(4) The economic benefits of oil pipeline construction projects are important to the state, including the creation of jobs. Nevertheless, the benefits of any proposed oil pipeline project must be weighed against any concerns brought by the residents of Nebraska.

Source: Laws 2011, First Spec. Sess., LB4, § 1.

57-1502 Terms, defined.

For purposes of sections 57-1501 to 57-1503:

(1) Department means the Department of Environmental Quality;

(2) Oil pipeline means a pipeline which is larger than eight inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means an individual, a company, a corporation, an association, or any other legal entity that engages in owning, operating, or managing an oil pipeline.

Source: Laws 2011, First Spec. Sess., LB4, § 2.

57-1503 Evaluation of route; supplemental environmental impact statement; department; powers and duties; pipeline carrier; reimburse cost; submit to Governor; duty; denial; notice to pipeline carrier; documents or records; not withheld from public.

(1)(a) The department may:

(i) Evaluate any route for an oil pipeline within, through, or across the state and submitted by a pipeline carrier for the stated purpose of being included in a federal agency's or agencies' National Environmental Policy Act review process. Any such evaluation shall include at least one public hearing, provide opportunities for public review and comment, and include, but not be limited to, an analysis of the environmental, economic, social, and other impacts associated with the proposed route and route alternatives in Nebraska. The department may collaborate with a federal agency or agencies and set forth the responsibilities and schedules that will lead to an effective and timely evaluation; or

(ii) Collaborate with a federal agency or agencies in a review under the National Environmental Policy Act involving a supplemental environmental impact statement for oil pipeline projects within, through, or across the state. Prior to entering into such shared jurisdiction and authority, the department shall collaborate with such agencies to set forth responsibilities and schedules for an effective and timely review process.

(b) A pipeline carrier that has submitted a route for evaluation or review pursuant to subdivision (1)(a) of this section shall reimburse the department for the cost of the evaluation or review within sixty days after notification from the department of the cost. The department shall remit any reimbursement to the State Treasurer for credit to the Department of Environmental Quality Cash Fund.

(2) The department may contract with outside vendors in the process of preparation of a supplemental environmental impact statement or an evaluation conducted under subdivision (1)(a) of this section. The department shall

make every reasonable effort to ensure that each vendor has no conflict of interest or relationship to any pipeline carrier that applies for an oil pipeline permit.

(3) In order for the process to be efficient and expeditious, the department's contracts with vendors pursuant to this section for a supplemental environmental impact statement or an evaluation conducted under subdivision (1)(a) of this section shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-510.

(4) After the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section is prepared, the department shall submit it to the Governor. Within thirty days after receipt of the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section from the department, the Governor shall indicate, in writing, to the federal agency or agencies involved in the review or any other appropriate federal agency or body as to whether he or she approves any of the routes reviewed in the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section. If the Governor does not approve any of the reviewed routes, he or she shall notify the pipeline carrier that in order to obtain approval of a route in Nebraska the pipeline carrier is required to file an application with the Public Service Commission pursuant to the Major Oil Pipeline Siting Act.

(5) The department shall not withhold any documents or records relating to an oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

Source: Laws 2011, First Spec. Sess., LB4, § 3; Laws 2012, LB858, § 16; Laws 2012, LB1161, § 7.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

CHAPTER 58

MONEY AND FINANCING

Article.

2. Nebraska Investment Finance Authority. 58-246, 58-270.
3. Small Business Development. Repealed.
4. Research and Development Authority. Repealed.
7. Nebraska Affordable Housing Act. 58-702 to 58-711.
8. Nebraska Educational, Health, and Social Services Finance Authority Act. 58-801 to 58-866.

ARTICLE 2

NEBRASKA INVESTMENT FINANCE AUTHORITY

Section

- 58-246. Agricultural projects; loan reports; public information; borrower's name omitted.
- 58-270. Authority; reports; contents; audit; issuance of bonds; notices.

58-246 Agricultural projects; loan reports; public information; borrower's name omitted.

The reports required pursuant to section 58-245 shall be public information. No such report shall reveal the name of any individual borrower. The authority shall, following the close of each fiscal year, deliver to the Governor and to the Clerk of the Legislature a set of the individual reporting forms from the preceding year together with the report required pursuant to subsection (2) of section 58-245. The reporting forms and the report submitted to the Clerk of the Legislature shall be submitted electronically. Any member of the Legislature shall receive an electronic copy of such reports by making a request to the chairperson of the authority.

Source: Laws 1983, LB 626, § 46; Laws 1991, LB 253, § 47; Laws 2012, LB782, § 85.

58-270 Authority; reports; contents; audit; issuance of bonds; notices.

(1) The authority shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the authority. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers. An independent certified public accountant shall at least once in each year audit the books and accounts of the authority.

(2) At least fourteen days prior to taking any final action to authorize the issuance of bonds to provide financing for projects, the beneficiaries or borrowers of which are not specifically identified, the authority shall notify the Governor, the Clerk of the Legislature, and any news media requesting notifica-

tion of such proposed issuance of bonds. The notification submitted to the Clerk of the Legislature shall be submitted electronically. Such notice shall include:

- (a) The public purposes to be effectuated and the needs to be addressed through the issuance of the bonds;
- (b) The manner in which such need was identified;
- (c) The anticipated principal amount of the bond issue and the anticipated date of issuance of the bonds;
- (d) The anticipated size of any reserve funds; and
- (e) The professionals involved in connection with the issuance of the bonds.

(3) Within thirty days following the issuance of bonds subject to subsection (2) of this section, the authority shall notify the Governor and the Clerk of the Legislature of:

- (a) The final principal amount of the bonds;
- (b) The net interest cost of the bonds;
- (c) The costs of issuance paid and to whom paid;
- (d) The total amount of any reserve funds;
- (e) The net interest cost to the beneficiaries or borrowers; and
- (f) The amount of funds available for loans.

The notification submitted to the Clerk of the Legislature shall be submitted electronically.

(4) With respect to bonds subject to subsection (2) of this section, until ninety-five percent of the proceeds of such bonds to be made available for loans are so used or a corresponding amount of such bonds are redeemed, the authority shall, no less often than quarterly after the issuance of such bonds, report to the Governor and the Clerk of the Legislature the status of the use of the proceeds of such issue of bonds. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Once the notice required pursuant to subsection (2) of this section is filed, nothing in this section shall require the authority to amend or supplement the notice prior to the issuance of the bonds.

(5) The notice and reporting requirements contained in this section shall be deemed satisfied upon good faith compliance by the authority. The failure to comply with any part of this section shall not affect the validity of any bonds issued by the authority.

Source: Laws 1983, LB 626, § 70; Laws 1984, LB 372, § 12; Laws 1991, LB 253, § 67; Laws 2012, LB782, § 86.

ARTICLE 3

SMALL BUSINESS DEVELOPMENT

Section

58-326. Repealed. Laws 2011, LB 4, § 1.

58-326 Repealed. Laws 2011, LB 4, § 1.

ARTICLE 4

RESEARCH AND DEVELOPMENT AUTHORITY

Section

58-443. Repealed. Laws 2011, LB 5, § 1.

58-443 Repealed. Laws 2011, LB 5, § 1.

ARTICLE 7

NEBRASKA AFFORDABLE HOUSING ACT

Section

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58-702 Legislative findings.

The Legislature finds that current economic conditions, lack of available affordable housing, federal housing policies that have placed an increasing burden on the state, and declining resources at all levels of government adversely affect the ability of Nebraska's citizens to obtain safe, decent, and affordable housing. Lack of affordable housing also affects the ability of communities to maintain and develop viable and stable economies.

Furthermore, the Legislature finds that impediments exist to the construction and rehabilitation of affordable housing. Local codes and state statutes have an important effect on housing's affordability by placing increased costs on developers. Financing affordable housing, especially in rural areas and smaller communities, is becoming increasingly difficult. In addition, existing dilapidated housing stock and industrial buildings are detrimental to new affordable housing development and the general health and safety of people living and working in or around such places. An affordable housing trust fund would assist all Nebraska communities in financing affordable housing projects and other projects which make the community safer for residents.

To enhance the economic development of the state and to provide for the general prosperity of all of Nebraska's citizens, it is in the public interest to assist in the provision of safe, decent, and affordable housing in all areas of the state. The establishment of the Nebraska Affordable Housing Act will assist in creating conditions favorable to meeting the affordable housing needs of the state.

Source: Laws 1996, LB 1322, § 12; Laws 2011, LB388, § 10.

58-703 Affordable Housing Trust Fund; created; use.

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to section 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, transfers authorized by the Legislature, grants, private contributions, repayment of loans, and all other sources. The

Department of Economic Development as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund, the Behavioral Health Services Fund, and the Site and Building Development Fund at the direction of the Legislature.

Source: Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1; Laws 2011, LB388, § 11; Laws 2012, LB969, § 6; Laws 2013, LB199, § 24; Laws 2013, LB214, § 9.

58-706 Affordable Housing Trust Fund; eligible activities.

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

- (1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;
- (2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;
- (3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;
- (4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;
- (5) Mortgage insurance guarantees for eligible projects;
- (6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;
- (7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;
- (8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;
- (9) Infrastructure projects necessary for the development of affordable housing;
- (10) Downpayment and closing cost assistance;
- (11) Demolition of existing vacant, condemned, or obsolete housing or industrial buildings or infrastructure;
- (12) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:
 - (a) Preparing potential home buyers to purchase affordable housing and postpurchase education;
 - (b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and
 - (c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing;
- (13) Support for efforts to improve programs benefiting homeless youth; and

(14) Vocational training in the housing and construction trades industries by nonprofit groups.

Source: Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2; Laws 2011, LB388, § 12; Laws 2011, LB413, § 1; Laws 2013, LB199, § 25.

58-708 Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than thirty percent, to each congressional district. The department shall announce a grant and loan application period of at least ninety days duration for all projects. In selecting projects to receive trust fund assistance, the department shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

(a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which are located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act, serve the lowest income occupant, and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

(3) The department may recapture any funds which were allocated to a qualified recipient for an eligible project through an award agreement if such funds were not utilized for eligible costs within the time of performance under the agreement and are therefore no longer obligated to the project. The recaptured funds shall be credited to the Industrial Recovery Fund except as provided in section 81-1213.

Source: Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3; Laws 2011, LB388, § 13; Laws 2014, LB800, § 5; Laws 2014, LB906, § 17.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB800, section 5, with LB906, section 17, to reflect all amendments.

Note: Changes made by LB906 became effective March 30, 2014. Changes made by LB800 became effective July 18, 2014.

Cross References

Enterprise Zone Act, see section 13-2101.01.

58-711 Information on status of Affordable Housing Trust Fund; report.

The Department of Economic Development shall submit, as part of the department's annual status report under section 81-1201.11, information detail-

ing the status of the Affordable Housing Trust Fund. The status report shall list (1) the applications funded during the previous calendar year, (2) the applications funded in previous years, (3) the identity of the organizations receiving funds, (4) the location of each project, (5) the amount of funding provided to the project, (6) the amount of funding leveraged as a result of the project, (7) the number of units of housing created by the project and the occupancy rate, (8) the expected cost of rent or monthly payment of those units, (9) the projected number of new employees and community investment as a result of the project, and (10) the amount of revenue deposited into the Affordable Housing Trust Fund pursuant to section 76-903. The status report shall contain no information that is protected by state or federal confidentiality laws.

Source: Laws 1997, LB 864, § 7; Laws 2011, LB404, § 3; Laws 2013, LB214, § 10.

ARTICLE 8

NEBRASKA EDUCATIONAL, HEALTH, AND SOCIAL SERVICES FINANCE AUTHORITY ACT

Section

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58-801 Act, how cited.

Sections 58-801 to 58-866 shall be known and may be cited as the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1981, LB 321, § 2; Laws 1993, LB 465, § 2; R.S.1943, (1994), § 79-2902; Laws 1995, LB 5, § 2; R.S.1943, (2008), § 85-1701; Laws 2013, LB170, § 1.

58-802 Legislative findings.

The Legislature finds and declares that:

(1) For the benefit of the people of the State of Nebraska, the increase of their commerce, welfare, and prosperity, and the fostering, protection, and improvement of their health and living conditions, it is essential that this and future generations of youth be given the greatest opportunity to learn and to fully develop their intellectual and mental capacities and skills and that there be encouraged, promoted, and supported adequate health, social, and emergency services for the care of and assistance to the people of the state;

(2) To achieve these ends it is of the utmost importance and in the public interest that private institutions of higher education within the state be provided with appropriate additional means of assisting such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills and that private health care institutions and private social

services institutions within the state be provided with appropriate additional means of caring for and protecting the public health and welfare;

(3) It is the purpose of the Nebraska Educational, Health, and Social Services Finance Authority Act to provide a measure of assistance and an alternative method of enabling private institutions of higher education, private health care institutions, and private social services institutions in the state to finance the acquisition, construction, improvement, equipment, and renovation of needed educational, health care, and social services facilities and structures and to refund, refinance, or reimburse outstanding indebtedness incurred by them or advances made by them, including advances from an endowment or any other similar fund, for the acquisition, construction, improvement, equipment, or renovation of needed educational, health care, and social services facilities and structures;

(4) The financing and refinancing of educational, health care, and social services facilities, through means other than the appropriation of public funds to private institutions of higher education, private health care institutions, and private social services institutions, as described in the act, is a valid public purpose;

(5) The availability of improved access to health profession schools will benefit the people of the State of Nebraska and improve their health, welfare, and living conditions;

(6) The establishment of a health education loan program, with the proceeds of bonds to be used for the purchase or making of loans to students or certain former students of health profession schools, will improve the access to such schools and assist such persons in meeting the expenses incurred in availing themselves of health education opportunities; and

(7) The establishment of a program to assist private institutions of higher education to provide loans to their full-time students pursuing an academic degree will improve access to higher education and contribute to the health, welfare, and living conditions in Nebraska.

Source: Laws 1981, LB 321, § 1; Laws 1983, LB 159, § 1; Laws 1993, LB 465, § 1; R.S.1943, (1994), § 79-2901; Laws 1995, LB 5, § 1; R.S.1943, (2008), § 85-1702; Laws 2013, LB170, § 2.

58-803 Definitions, where found.

For purposes of the Nebraska Educational, Health, and Social Services Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-804 to 58-812 shall apply.

Source: Laws 1981, LB 321, § 3; Laws 1983, LB 159, § 14; Laws 1993, LB 465, § 3; R.S.1943, (1994), § 79-2903; Laws 1995, LB 5, § 3; R.S.1943, (2008), § 85-1703; Laws 2013, LB170, § 3.

58-804 Authority, defined.

Authority means the Nebraska Educational, Health, and Social Services Finance Authority created by the Nebraska Educational, Health, and Social Services Finance Authority Act or any board, body, commission, department, or

office succeeding to the principal functions thereof or to whom the powers conferred upon such authority by the act are given by law.

Source: Laws 1981, LB 321, § 4; Laws 1993, LB 465, § 4; R.S.1943, (1994), § 79-2904; Laws 1995, LB 5, § 4; R.S.1943, (2008), § 85-1704; Laws 2013, LB170, § 4.

58-805 Bonds, defined.

Bonds means bonds, notes, or other obligations of the authority issued under the Nebraska Educational, Health, and Social Services Finance Authority Act, including refunding bonds, notwithstanding that the same may be secured by the full faith and credit of an eligible institution or any other lawfully pledged security of an eligible institution.

Source: Laws 1981, LB 321, § 8; Laws 1993, LB 465, § 6; R.S.1943, (1994), § 79-2908; Laws 1995, LB 5, § 5; R.S.1943, (2008), § 85-1705; Laws 2013, LB170, § 5.

58-806 Cost, defined.

Cost as applied to a project or any portion thereof financed under the Nebraska Educational, Health, and Social Services Finance Authority Act means all or any part of the cost of acquisition, construction, improvement, equipment, and renovation of all land, buildings, or structures including the cost of machinery and equipment; finance charges; interest prior to, during, and after completion of such construction for a reasonable period as determined by the authority; reserves for principal and interest; extensions, enlargements, additions, replacements, renovations, and improvements; engineering, financial, and legal services; plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, bond issuance costs, and expenses necessary or incidental to determining the feasibility or practicability of constructing the project; and such other expenses as the authority determines may be necessary or incidental to the acquisition, construction, improvement, equipment, and renovation of the project, the financing of such acquisition, construction, improvement, equipment, and renovation, and the placing of the project in operation.

Source: Laws 1981, LB 321, § 7; Laws 1993, LB 465, § 5; R.S.1943, (1994), § 79-2907; Laws 1995, LB 5, § 6; R.S.1943, (2008), § 85-1706; Laws 2013, LB170, § 6.

58-807 Eligible institution, defined.

Eligible institution means a private institution of higher education, a private health care institution, or a private social services institution.

Source: Laws 2013, LB170, § 7.

58-808 Private health care institution, defined.

Private health care institution means any private not-for-profit corporation or institution that (1) is licensed under the Health Care Facility Licensure Act, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality

thereof, and (4) does not violate any Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

Source: Laws 2013, LB170, § 8.

Cross References

Health Care Facility Licensure Act, see section 71-401.

58-809 Private institution of higher education, defined.

Private institution of higher education means a not-for-profit educational institution located within this state which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which is authorized by law to provide a program of education beyond the high school level, and which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(2) Provides an educational program for which it awards a bachelor's degree; provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree; provides a program of not less than two years in length which is acceptable for full credit toward a bachelor's degree; or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, research, medicine, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(3) Is accredited by a regionally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; and

(4) Has a student admissions policy that does not violate any other Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

Source: Laws 1981, LB 321, § 9; R.S.1943, (1994), § 79-2909; Laws 1995, LB 5, § 7; Laws 1998, LB 303, § 1; R.S.1943, (2008), § 85-1707; Laws 2013, LB170, § 9.

58-810 Private social services institution, defined.

Private social services institution means any private not-for-profit corporation or institution that (1) provides health, safety, and welfare assistance, including emergency, social, housing, and related support services, to members of the general public in the state, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

Source: Laws 2013, LB170, § 10.

58-811 Project, defined.

(1) Project means any property located within the state that may be used or will be useful in connection with the instruction, feeding, recreation, or housing of students, the provision of health care services to members of the general public, the provision of social services to members of the general public, the conducting of research, administration, or other work of an eligible institution, or any combination of the foregoing. Project includes, but is not limited to, an academic facility, administrative facility, agricultural facility, assembly hall, assisted-living facility, athletic facility, auditorium, campus, communication facility, congregate care housing, emergency services facility, exhibition hall, health care facility, health service institution, hospital, housing for faculty and other staff, instructional facility, laboratory, library, maintenance facility, medical clinic, medical services facility, museum, nursing or skilled nursing services facility, offices, parking area, personal care services facility, physical educational facility, recreational facility, research facility, senior, retirement, or home care services facility, social services facility, stadium, storage facility, student facility, student health facility, student housing, student union, theatre, or utility facility.

(2) Project also means and includes the refunding or refinancing of outstanding obligations, mortgages, or advances, including advances from an endowment or similar fund, originally issued, made, or given by the eligible institution to finance the cost of a project or projects, and including the financing of eligible swap termination payments, whenever the authority finds that such refunding or refinancing is in the public interest and either:

(a) Alleviates a financial hardship upon the eligible institution;

(b) Results in a lesser cost of education, health care, housing, or social and related support services to the eligible institution's students, patients, residents, clients, and other general public consumers; or

(c) Enables the eligible institution to offer greater security for the financing of a new project or projects or to effect savings in interest costs or more favorable amortization terms.

Source: Laws 1981, LB 321, § 5; R.S.1943, (1994), § 79-2905; Laws 1995, LB 5, § 8; R.S.1943, (2008), § 85-1708; Laws 2013, LB170, § 11.

58-812 Property, defined.

Property means the real estate upon which a project is or will be located, including equipment, machinery, and other similar items necessary or convenient for the operation of the project in the manner for which its use is intended, but not including such items as fuel, supplies, or other items that are customarily deemed to result in a current operation charge. Property does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship nor any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion.

Source: Laws 1981, LB 321, § 6; R.S.1943, (1994), § 79-2906; Laws 1995, LB 5, § 9; R.S.1943, (2008), § 85-1709; Laws 2013, LB170, § 12.

58-813 Nebraska Educational, Health, and Social Services Finance Authority; created.

There is hereby created a body politic and corporate to be known as the Nebraska Educational, Health, and Social Services Finance Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by the Nebraska Educational, Health, and Social Services Finance Authority Act shall be deemed and held to be the performance of an essential public function of the state.

Source: Laws 1981, LB 321, § 10; Laws 1993, LB 465, § 7; R.S.1943, (1994), § 79-2910; Laws 1995, LB 5, § 10; R.S.1943, (2008), § 85-1710; Laws 2013, LB170, § 13.

58-814 Authority; members; qualifications; appointment; terms; removal.

(1) The authority shall consist of seven members, to be appointed by the Governor, who shall be residents of the state, not more than four of whom shall be members of the same political party.

(2) Of the seven members:

(a) At least one shall be a trustee, director, officer, or employee of one or more private institutions of higher education in the state;

(b) At least one shall be a person having a favorable reputation for skill, knowledge, and experience in the field of finance;

(c) At least one shall be a person experienced in and having a favorable reputation for skill, knowledge, and experience in the educational building construction field;

(d) At least one shall be a person experienced in and having a favorable reputation in the field of public accounting;

(e) After the initial appointment provided for in subdivision (3)(a) of this section is made, at least one shall be a trustee, director, officer, or employee of one or more private health care institutions in the state; and

(f) After the initial appointment provided for in subdivision (3)(b) of this section is made, at least one shall be a trustee, director, officer, or employee of one or more private social services institutions in the state.

(3) The initial appointments of the members described in subdivisions (2)(e) and (2)(f) of this section shall be made as follows:

(a) For the first member whose term expires after September 6, 2013, and who is not the sole member described in subdivision (2)(a), (2)(b), (2)(c), or (2)(d) of this section, the Governor shall appoint a successor who meets the qualifications described in subdivision (2)(e) of this section; and

(b) For the second member whose term expires after September 6, 2013, and who is not the sole member described in subdivision (2)(a), (2)(b), (2)(c), or (2)(d) of this section, the Governor shall appoint a successor who meets the qualifications described in subdivision (2)(f) of this section.

(4) The members of the authority first appointed shall serve for terms expiring as follows: One on December 31, 1982; two on December 31, 1983; two on December 31, 1984; and two on December 31, 1985, respectively, the term of each such member to be designated by the Governor. Upon the expiration of the term of any member, his or her successor shall be appointed for a term of four years and until a successor has been appointed and qualified.

The Governor shall fill any vacancy for the remainder of the unexpired term. Any member of the authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless such notice and hearing shall be expressly waived in writing by the accused member. Each member shall be eligible for reappointment to a successive term but shall be declared ineligible for three consecutive full terms.

Source: Laws 1981, LB 321, § 11; Laws 1984, LB 644, § 1; R.S.1943, (1994), § 79-2911; Laws 1995, LB 5, § 11; R.S.1943, (2008), § 85-1711; Laws 2013, LB170, § 14.

58-815 Authority; officers; executive director; compensation; receive contributions.

Each year the authority shall elect one of its members as chairperson and another member as vice-chairperson. It may appoint an executive director and assistant executive director, who shall not be members of the authority but who shall serve at the pleasure of the authority. An assistant executive director shall perform the duties of the executive director in the event of the absence or inability to act of the executive director. They shall receive such compensation as shall be fixed by the authority. The authority may receive contributions to fund any of the expenses of the authority from private donors, including any one or more of the eligible institutions or any one or more associations representing the eligible institutions.

Source: Laws 1981, LB 321, § 12; Laws 1993, LB 465, § 8; R.S.1943, (1994), § 79-2912; Laws 1995, LB 5, § 12; R.S.1943, (2008), § 85-1712; Laws 2013, LB170, § 15.

58-816 Authority; keep records and accounts; seal; certified copies.

The executive director, assistant executive director, or any other person designated by resolution of the authority shall keep records and accounts of all proceedings and financial dealings of the authority, shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal, and shall be custodian of all funds of the authority. The executive director, assistant executive director, or other designated person may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

Source: Laws 1981, LB 321, § 13; R.S.1943, (1994), § 79-2913; Laws 1995, LB 5, § 13; R.S.1943, (2008), § 85-1713; Laws 2013, LB170, § 16.

58-817 Authority; quorum; actions; vacancy; effect; meetings.

Four members of the authority shall constitute a quorum. The affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the Nebraska Educational, Health, and Social Services Finance Authority Act may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

Members of the authority may participate in a regular or special meeting of the authority by telephone conference call or videoconference as long as the chairperson or vice-chairperson conducts the meeting at a location where the public is able to participate by attendance at that location and the telephone conference call or videoconference otherwise conforms to the requirements of subdivisions (2)(a) through (e) of section 84-1411.

Source: Laws 1981, LB 321, § 14; Laws 1984, LB 644, § 2; Laws 1993, LB 465, § 9; R.S.1943, (1994), § 79-2914; Laws 1995, LB 5, § 14; R.S.1943, (2008), § 85-1714; Laws 2013, LB170, § 17.

58-818 Authority; officers, members, and employees; surety bond requirements.

Before the issuance of any bonds under the Nebraska Educational, Health, and Social Services Finance Authority Act, the chairperson, vice-chairperson, executive director, and assistant executive director, if any, and any other member of the authority authorized by resolution of the authority to handle funds or sign checks of the authority shall execute a surety bond in such amount as a majority of the members of the authority determine, or alternatively, the chairperson of the authority shall execute a blanket bond effecting such coverage. Each surety bond shall be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety company authorized to transact business in this state, and the cost of each such surety bond shall be paid by the authority.

Source: Laws 1981, LB 321, § 15; Laws 1993, LB 465, § 10; R.S.1943, (1994), § 79-2915; Laws 1995, LB 5, § 15; R.S.1943, (2008), § 85-1715; Laws 2013, LB170, § 18.

58-819 Authority; members; expenses.

The members of the authority shall receive no compensation for the performance of their duties as members, but each such member shall be paid his or her actual and necessary expenses while engaged in the performance of such duties as provided in sections 81-1174 to 81-1177 from any funds legally available therefor.

Source: Laws 1981, LB 321, § 16; R.S.1943, (1994), § 79-2916; Laws 1995, LB 5, § 16; R.S.1943, (2008), § 85-1716; Laws 2013, LB170, § 19.

58-820 Authority member or employee; conflict of interest; abstention.

Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer, or employee of any educational institution, health care institution, social services institution, financial institution, commercial bank or trust company, architecture firm, insurance company, or any firm, person, or corporation to serve as a member of the authority, but such trustee, director, officer, or employee shall abstain from any deliberation or action by the authority when the business affiliation of any such trustee, director, officer, or employee is involved. The executive director may serve less than full time. If the executive director serves less than full time, his or her other employment, if any, shall be reviewed by the members of the authority for potential conflicts of interest and whether such other employment would prevent the executive director from fully discharging his or her duties. No

member of the authority may be a representative of a bank, investment banking firm, or other financial institution that underwrites the bonds of the authority.

Source: Laws 1981, LB 321, § 17; R.S.1943, (1994), § 79-2917; Laws 1995, LB 5, § 17; R.S.1943, (2008), § 85-1717; Laws 2013, LB170, § 20.

58-821 Authority; purpose.

The purpose of the authority shall be to assist eligible institutions in the acquisition, construction, improvement, equipment, renovation, financing, and refinancing of projects and to administer and operate the Nebraska Health Education Assistance Loan Program as provided in sections 58-857 to 58-862 and the Nebraska Student Loan Assistance Program as provided in sections 58-863 to 58-865.

Source: Laws 1981, LB 321, § 18; Laws 1983, LB 159, § 3; Laws 1993, LB 465, § 11; R.S.1943, (1994), § 79-2918; Laws 1995, LB 5, § 18; R.S.1943, (2008), § 85-1718; Laws 2013, LB170, § 21.

58-822 Authority; perpetual succession; bylaws.

The authority shall have perpetual succession as a body politic and corporate and may adopt bylaws for the regulation of its affairs and the conduct of its business.

Source: Laws 1981, LB 321, § 19; R.S.1943, (1994), § 79-2919; Laws 1995, LB 5, § 19; R.S.1943, (2008), § 85-1719; Laws 2013, LB170, § 22.

58-823 Authority; adopt seal.

The authority may adopt an official seal and alter the same at its pleasure.

Source: Laws 1981, LB 321, § 20; R.S.1943, (1994), § 79-2920; Laws 1995, LB 5, § 20; R.S.1943, (2008), § 85-1720; Laws 2013, LB170, § 23.

58-824 Authority; office; location.

The authority may maintain an office at such place or places within Nebraska as it may designate.

Source: Laws 1981, LB 321, § 21; R.S.1943, (1994), § 79-2921; Laws 1995, LB 5, § 21; R.S.1943, (2008), § 85-1721; Laws 2013, LB170, § 24.

58-825 Authority; sue and be sued.

The authority may sue and be sued in its own name.

Source: Laws 1981, LB 321, § 22; R.S.1943, (1994), § 79-2922; Laws 1995, LB 5, § 22; R.S.1943, (2008), § 85-1722; Laws 2013, LB170, § 25.

58-826 Authority; powers over project.

The authority may determine the location and character of any project to be financed or refinanced under the Nebraska Educational, Health, and Social Services Finance Authority Act and acquire, construct, reconstruct, improve,

equip, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same. The authority may also enter into contracts for any or all of such purposes, enter into contracts for the management and operation of a project, and designate an eligible institution as its agent to determine the location and character of a project undertaken by such eligible institution under the act and, as the agent of the authority, to acquire, construct, reconstruct, improve, equip, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project.

Source: Laws 1981, LB 321, § 23; Laws 1993, LB 465, § 12; R.S.1943, (1994), § 79-2923; Laws 1995, LB 5, § 23; R.S.1943, (2008), § 85-1723; Laws 2013, LB170, § 26.

58-827 Authority; issuance of bonds authorized.

The authority may issue bonds of the authority for any of its corporate purposes and fund or refund the same pursuant to the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1981, LB 321, § 24; Laws 1993, LB 465, § 13; R.S.1943, (1994), § 79-2924; Laws 1995, LB 5, § 24; R.S.1943, (2008), § 85-1724; Laws 2013, LB170, § 27.

58-828 Authority; charge for services.

The authority may charge and collect rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and contract with any person, partnership, limited liability company, association, or corporation or other body public or private, except that the authority shall have no jurisdiction over rates, rents, fees, and charges established by an eligible institution for its students, patients, residents, clients, or other consumers other than to require that such rates, rents, fees, and charges by such eligible institution be sufficient to discharge such institution's obligation to the authority.

Source: Laws 1981, LB 321, § 25; Laws 1993, LB 121, § 520; R.S.1943, (1994), § 79-2925; Laws 1995, LB 5, § 25; R.S.1943, (2008), § 85-1725; Laws 2013, LB170, § 28.

58-829 Authority; rules and regulations for use of project; designate agent.

The authority may establish rules and regulations for the use of a project or any portion thereof and designate an eligible institution as its agent to establish rules and regulations for the use of a project undertaken by such eligible institution.

Source: Laws 1981, LB 321, § 26; R.S.1943, (1994), § 79-2926; Laws 1995, LB 5, § 26; R.S.1943, (2008), § 85-1726; Laws 2013, LB170, § 29.

58-830 Authority; personnel.

The authority may employ consulting engineers, architects, attorneys, accountants, trustees, construction and finance experts, superintendents, manag-

ers, and such other employees and agents as may be necessary in its judgment, and fix their compensation.

Source: Laws 1981, LB 321, § 27; R.S.1943, (1994), § 79-2927; Laws 1995, LB 5, § 27; R.S.1943, (2008), § 85-1727; Laws 2013, LB170, § 30.

58-831 Authority; receive loans, grants, and contributions.

The authority may receive and accept from any source loans or grants for or in aid of the acquisition, construction, improvement, equipment, or renovation of a project or any portion thereof, and receive and accept from any source loans, grants, aid, or contributions of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such loans, grants, aid, or contributions are made.

Source: Laws 1981, LB 321, § 28; R.S.1943, (1994), § 79-2928; Laws 1995, LB 5, § 28; R.S.1943, (2008), § 85-1728; Laws 2013, LB170, § 31.

58-832 Authority; mortgage of certain property.

The authority may mortgage all or any portion of any project or any other facilities conveyed to the authority for such purpose and the site or sites thereof, whether presently owned or subsequently acquired, for the benefit of the holders of the bonds of the authority issued to finance such project or any portion thereof or issued to refund or refinance outstanding indebtedness or to reimburse an endowment or any similar fund of an eligible institution as permitted by the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1981, LB 321, § 29; Laws 1993, LB 465, § 14; R.S.1943, (1994), § 79-2929; Laws 1995, LB 5, § 29; R.S.1943, (2008), § 85-1729; Laws 2013, LB170, § 32.

58-833 Authority; loans authorized; limitation.

The authority may make loans to any eligible institution for the cost of any project or in anticipation of the receipt of tuition or other revenue by the eligible institution in accordance with an agreement between the authority and such eligible institution, except that (1) no such loan shall exceed the total cost of such project as determined by such eligible institution and approved by the authority and (2) any loan made in anticipation of the receipt of tuition or other revenue shall not exceed the anticipated amount of tuition or other revenue to be received by the eligible institution in the one-year period following the date of such loan.

Source: Laws 1981, LB 321, § 30; R.S.1943, (1994), § 79-2930; Laws 1995, LB 5, § 30; Laws 2003, LB 107, § 1; R.S.1943, (2008), § 85-1730; Laws 2013, LB170, § 33.

58-834 Authority; issue bonds; make loans; conditions.

The authority may issue bonds and make loans to an eligible institution and refund or reimburse outstanding obligations, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by such eligible institution for the cost of a project, including the power to issue

bonds and make loans to an eligible institution to refinance indebtedness incurred or to reimburse advances made for projects undertaken prior thereto whenever the authority has received a written letter of intent to underwrite, place, or purchase the bonds from a financial institution having the powers of an investment bank, commercial bank, or trust company and finds that such financing or refinancing is in the public interest, and either: (1) Alleviates a financial hardship upon the eligible institution; (2) results in a lesser cost of education, health care services, or social services; or (3) enables the eligible institution to offer greater security for a loan or loans to finance a new project or projects or to effect savings in interest costs or more favorable amortization terms.

Source: Laws 1981, LB 321, § 31; R.S.1943, (1994), § 79-2931; Laws 1995, LB 5, § 31; R.S.1943, (2008), § 85-1731; Laws 2013, LB170, § 34.

58-835 Authority; administrative costs; apportionment.

The authority may charge to and equitably apportion among participating eligible institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1981, LB 321, § 32; Laws 1993, LB 465, § 15; R.S.1943, (1994), § 79-2932; Laws 1995, LB 5, § 32; R.S.1943, (2008), § 85-1732; Laws 2013, LB170, § 35.

58-836 Authority; general powers; joint projects.

The authority may do all things necessary or convenient to carry out the purposes of the Nebraska Educational, Health, and Social Services Finance Authority Act.

In carrying out the purposes of the act, the authority may undertake a project for two or more eligible institutions jointly, or for any combination thereof, and thereupon all other provisions of the act shall apply to and be for the benefit of the authority and such joint participants.

Source: Laws 1981, LB 321, § 33; Laws 1993, LB 465, § 16; R.S.1943, (1994), § 79-2933; Laws 1995, LB 5, § 33; R.S.1943, (2008), § 85-1733; Laws 2013, LB170, § 36.

58-837 Authority; combine and substitute projects; bonds; additional series.

Notwithstanding any other provision contained in the Nebraska Educational, Health, and Social Services Finance Authority Act, the authority may combine for financing purposes, with the consent of all of the eligible institutions which are involved, the project or projects and some or all future projects of any eligible institutions, but the money set aside in any fund or funds pledged for any series or issue of bonds shall be held for the sole benefit of such series or issue separate and apart from any money pledged for any other series or issue of bonds of the authority. To facilitate the combining of projects, bonds may be issued in series under one or more resolutions or trust indentures and be fully open end, thus providing for the unlimited issuance of additional series, or partially open end, limited as to additional series, all in the discretion of the authority. Notwithstanding any other provision of the act to the contrary, the authority may, in its discretion, permit an eligible institution to substitute one

or more projects of equal value, as determined by an independent appraiser satisfactory to the authority, for any project financed under the act on such terms and subject to such conditions as the authority may prescribe.

Source: Laws 1981, LB 321, § 34; Laws 1993, LB 465, § 17; R.S.1943, (1994), § 79-2934; Laws 1995, LB 5, § 34; R.S.1943, (2008), § 85-1734; Laws 2013, LB170, § 37.

58-838 Expenses; how paid; liability; limitation.

All expenses incurred in carrying out the Nebraska Educational, Health, and Social Services Finance Authority Act shall be payable solely from funds provided under the act, and no liability or obligation shall be incurred by the authority beyond the extent to which money has been provided under the act.

Source: Laws 1981, LB 321, § 35; Laws 1993, LB 465, § 18; R.S.1943, (1994), § 79-2935; Laws 1995, LB 5, § 35; R.S.1943, (2008), § 85-1735; Laws 2013, LB170, § 38.

58-839 Authority; acquisition of property.

The authority is authorized and empowered, directly or by and through an eligible institution, as its agent, to acquire by purchase, gift, or devise, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and other interests in lands, and including existing facilities of an eligible institution, as it may deem necessary or convenient for the acquisition, construction, improvement, equipment, renovation, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of an eligible institution as its agent.

Source: Laws 1981, LB 321, § 36; R.S.1943, (1994), § 79-2936; Laws 1995, LB 5, § 36; R.S.1943, (2008), § 85-1736; Laws 2013, LB170, § 39.

58-840 Authority; financing obligations completed; convey title to eligible institution.

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for an eligible institution, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution and any trust indenture authorizing the same have been satisfied and the lien created by such resolution or trust indenture has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds, conveyances, and other instruments, if any, as are necessary and required to convey title to such project or projects to such eligible institution.

Source: Laws 1981, LB 321, § 37; R.S.1943, (1994), § 79-2937; Laws 1995, LB 5, § 37; R.S.1943, (2008), § 85-1737; Laws 2013, LB170, § 40.

58-841 Authority; bonds; issuance; form; proceeds; how used; replacement; liability; liability insurance; indemnification.

The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds for the purpose of (1) paying, refinancing, or reimbursing all or any part of the cost of a project, (2) administering and operating the Nebraska Health Education Assistance Loan Program and the Nebraska Student Loan Assistance Program, or (3) making loans to any eligible institution in anticipation of the receipt of tuition or other revenue by the eligible institution. Except to the extent payable from payments to be made on securities or federally guaranteed securities as provided in sections 58-844 and 58-845, the principal of and the interest on such bonds shall be payable solely out of the revenue of the authority derived from the project or program to which they relate and from any other facilities or assets pledged or made available therefor by the eligible institution for whose benefit such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates, including variations of such rates, without regard to any limit contained in any other statute or law of the State of Nebraska, shall mature at such time or times not exceeding forty years from the date thereof, all as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices, which may be at a premium or discount, and under such terms and conditions as may be fixed by the authority in the authorizing resolution and any trust indenture. Except to the extent required by the Nebraska Educational, Health, and Social Services Finance Authority Act and for bonds issued to fund the Nebraska Student Loan Assistance Program, such bonds are to be paid out of the revenue of the project to which they relate and, in certain instances, the revenue of certain other facilities, and subject to the provisions of sections 58-844 and 58-845 with respect to a pledge of securities or government securities, the bonds may be unsecured or secured in the manner and to the extent determined by the authority in its discretion.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest which may be at any bank or trust company within or without the state. The bonds shall be signed in the name of the authority, by its chairperson or vice-chairperson or by a facsimile signature of such person, the official seal of the authority or a facsimile thereof shall be affixed thereto or printed or impressed thereon and attested by the manual or facsimile signature of the executive director or assistant executive director of the authority, except that facsimile signatures of members of the authority shall be sufficient only if the resolution or trust indenture requires that the trustee for such bond issue manually authenticate each bond and the resolution or trust indenture permits the use of facsimile signatures, and any coupons attached to the bonds shall bear the facsimile signature of the executive director or assistant executive director of the authority. The resolution or trust indenture authorizing the bonds may provide that the bonds contain a recital that they are issued under the Nebraska Educational, Health, and Social Services Finance Authority Act, and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. The provisions of section 10-126 shall not apply to bonds issued by the authority. The provisions of section 10-140 shall apply to bonds issued by the authority. In case any official of the authority whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such an official before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the

same as if he or she had remained an official of the authority until such delivery.

All bonds issued under the act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the law of the State of Nebraska. The bonds may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in such manner as the authority may determine. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The bonds may be sold in such manner, either at public or private sale, as the authority may determine.

The proceeds of the bonds of each issue shall be used solely for the payment of the costs of the project or program for which such bonds have been issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust indenture provided for in section 58-843 securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, are less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue exceed the cost of the project or program for which they were issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or shall be applied as may otherwise be permitted by applicable federal income tax laws relating to the tax exemption of interest.

Prior to the preparation of definitive bonds, the authority may under like restrictions issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

The authority may also provide for the replacement of any bonds which become mutilated or are destroyed or lost. Bonds may be issued under the act without obtaining the consent of any officer, department, division, commission, board, bureau, or agency of the state and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by the act. The authority may out of any funds available therefor purchase its bonds. The authority may hold, pledge, cancel, or resell such bonds, subject to and in accordance with any agreement with the bondholders.

Members of the authority shall not be liable to the state, the authority, or any other person as a result of their activities, whether ministerial or discretionary, as authority members, except for willful dishonesty or intentional violations of law. Members of the authority and any person executing bonds or policies of insurance shall not be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof. The authority may purchase liability insurance for members, officers, and employees and may indemnify any authority member to the same extent that a school district may indemnify a school board member pursuant to section 79-516.

Source: Laws 1981, LB 321, § 38; Laws 1983, LB 159, § 4; Laws 1993, LB 465, § 19; R.S.1943, (1994), § 79-2938; Laws 1995, LB 5, § 38; Laws 2003, LB 107, § 2; Laws 2011, LB424, § 1; R.S.Supp.,2012, § 85-1738; Laws 2013, LB170, § 41.

58-842 Bond issuance; resolution; provisions enumerated.

Any resolution or resolutions authorizing any bonds or any issue of bonds and any trust indenture securing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to (1) pledging or assigning the revenue of the project or loan with respect to which such bonds are to be issued or the revenue of any other property, facilities, or loans, (2) the rentals, fees, loan payments, and other amounts to be charged, the amounts to be raised in each year thereby, and the use and disposition of such amounts, (3) the setting aside of reserves or sinking funds, and the regulation, investment, and disposition thereof, (4) limitations on the use of the project, (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds, (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds, (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given, (8) limitations on the amount of money derived from the project or loan to be expended for operating, administrative, or other expenses of the authority, (9) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default, (10) the mortgaging of a project and the site thereof or any other property for the purpose of securing the bondholders, and (11) any other matters relating to the bonds which the authority deems desirable.

Source: Laws 1981, LB 321, § 39; Laws 1983, LB 159, § 5; R.S.1943, (1994), § 79-2939; Laws 1995, LB 5, § 39; R.S.1943, (2008), § 85-1739; Laws 2013, LB170, § 42.

58-843 Bonds; secured by trust indenture; contents; expenses; how treated.

In the discretion of the authority any bonds issued under the Nebraska Educational, Health, and Social Services Finance Authority Act may be secured by a trust indenture, which trust indenture may be in the form of a bond resolution or similar contract, by and between the authority and a corporate trustee or trustees which may be any financial institution having the power of a trust company or any trust company within or outside the state. Such trust indenture providing for the issuance of such bonds may pledge or assign the revenue to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust indenture by which a pledge is created or an assignment made shall be filed in the records of the authority.

Any pledge or assignment made by the authority pursuant to this section shall be valid and binding from the time that the pledge or assignment is made, and the revenue so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge or assignment without physical delivery thereof or any further act. The lien of such pledge or assignment shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof.

Such trust indenture may set forth the rights and remedies of the bondholders and of the trustee or trustees, may restrict the individual right of action by bondholders, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee or trustees as may be reasonable and proper, not in violation of law, or provided for in the Nebraska Educational, Health, and Social Services Finance Authority Act. Any such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

Any bank or trust company which acts as depository of the proceeds of the bonds, any revenue, or other money shall furnish such indemnifying bonds or pledge such securities as may be required by the authority.

All expenses incurred in carrying out the provisions of such trust indenture may be treated as a part of the cost of the operation of a project.

Source: Laws 1981, LB 321, § 40; Laws 1993, LB 465, § 20; R.S.1943, (1994), § 79-2940; Laws 1995, LB 5, § 40; R.S.1943, (2008), § 85-1740; Laws 2013, LB170, § 43.

58-844 Bonds issued to purchase securities of eligible institution; provisions applicable.

In addition to any other methods of financing authorized in the Nebraska Educational, Health, and Social Services Finance Authority Act, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from an endowment or any similar fund of an eligible institution as authorized by section 58-834 by issuing its bonds for the purpose of purchasing the securities of the eligible institution. Any such securities shall have the same principal amounts, maturities, and interest rates as the bonds being issued, may be secured by a first mortgage lien on or security interest in any real or personal property, subject to such exceptions as the authority may approve and created by a mortgage or security instrument satisfactory to the authority, and may be insured or guaranteed by others. Any such bonds shall be secured by a pledge of such securities under the trust indenture securing such bonds, shall be payable solely out of the payments to be made on such securities, and shall not exceed in principal amount the cost of such project or program, the refunding of such indebtedness, or reimbursement of such advances as determined by the eligible institution and approved by the authority. In other respects any such bonds shall be subject to the act, including sections 58-841 and 58-842, and the trust indenture securing such bonds may contain any of the provisions set forth in section 58-843 as the authority may consider appropriate.

If a project is financed pursuant to this section, the title to such project shall remain in the eligible institution owning such project, subject to the lien of the mortgage or security interest, if any, securing the securities then being purchased, and there shall be no lease of such facility between the authority and such eligible institution.

Section 58-840 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the eligible institution issuing such securities when such bonds have been fully paid and retired or when adequate provision has been made to pay and retire such bonds fully and all other conditions of the trust indenture securing such bonds have been satisfied and

any lien established pursuant to this section has been released in accordance with the provisions of the trust indenture.

Source: Laws 1981, LB 321, § 41; Laws 1993, LB 465, § 21; R.S.1943, (1994), § 79-2941; Laws 1995, LB 5, § 41; R.S.1943, (2008), § 85-1741; Laws 2013, LB170, § 44.

58-845 Bonds issued to acquire federally guaranteed securities; provisions applicable.

Notwithstanding any other provision of the Nebraska Educational, Health, and Social Services Finance Authority Act to the contrary, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from any endowment or any similar fund of an eligible institution as authorized by the act, by issuing its bonds pursuant to a plan of financing involving the acquisition of any federally guaranteed security or securities or the acquisition or entering into of commitments to acquire any federally guaranteed security or securities. For purposes of this section, federally guaranteed security means any direct obligation of or obligation the principal of and interest on which are fully guaranteed or insured by the United States of America or any obligation issued by or the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States of America, including without limitation any such obligation that is issued pursuant to the National Housing Act, or any successor provision of law, each as amended from time to time.

In furtherance of the powers granted in this section, the authority may acquire or enter into commitments to acquire any federally guaranteed security and pledge or otherwise use any such federally guaranteed security in such manner as the authority deems in its best interest to secure or otherwise provide a source of repayment of any of its bonds issued to finance or refinance a project or program or may enter into any appropriate agreement with any eligible institution whereby the authority may make a loan to any such eligible institution for the purpose of acquiring or entering into commitments to acquire any federally guaranteed security.

Any agreement entered into pursuant to this section may contain such provisions as are deemed necessary or desirable by the authority for the security or protection of the authority or the holders of such bonds, except that the authority, prior to making any such acquisition, commitment, or loan, shall first determine and enter into an agreement with any such eligible institution or any other appropriate institution or corporation to require that the proceeds derived from the acquisition of any such federally guaranteed security will be used, directly or indirectly, for the purpose of financing or refinancing a project or program.

Any bonds issued pursuant to this section shall not exceed in principal amount the cost of financing or refinancing such project or program as determined by the participating eligible institution and approved by the authority, except that such costs may include, without limitation, all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any insurance or guarantee of any obligation issued or incurred in connection with any federally guaranteed security. In other respects any such bonds shall be subject to the Nebraska Educational, Health, and Social Services Finance

Authority Act, including sections 58-841 and 58-842, and the trust indenture securing such bonds may contain such of the provisions set forth in section 58-843 as the authority may deem appropriate.

If a project is financed or refinanced pursuant to this section, the title to such project shall remain in the participating eligible institution owning the project, subject to the lien of any mortgage or security interest securing, directly or indirectly, the federally guaranteed securities then being purchased or to be purchased, and there shall be no lease of such facility between the authority and such eligible institution.

Section 58-840 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the issuer of such securities when such securities have been fully paid, when such bonds have been fully paid and retired, or when adequate provision, not involving the application of such securities, has been made to pay and retire such bonds fully, all other conditions of the trust indenture securing such bonds have been satisfied, and the lien on such bonds has been released in accordance with the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1981, LB 321, § 42; Laws 1993, LB 465, § 22; R.S.1943, (1994), § 79-2942; Laws 1995, LB 5, § 42; R.S.1943, (2008), § 85-1742; Laws 2013, LB170, § 45.

58-846 Refunding bonds; issuance authorized; provisions applicable.

The authority is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued by it under the Nebraska Educational, Health, and Social Services Finance Authority Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of maturity or earlier redemption of such bonds, and, in the case of a project and if deemed advisable by the authority, for the additional purposes of acquiring, constructing, improving, equipping, and renovating improvements, extensions, or enlargements of the project in connection with which the bonds to be refunded were issued and of paying any expenses which the authority determines may be necessary or incidental to the issuance of such refunding bonds and the acquiring, constructing, improving, equipping, and renovating of such improvements, extensions, or enlargements. Such refunding bonds shall be payable solely out of the revenue of the project, including any such improvements, extensions, or enlargements thereto, or program to which the bonds being refunded relate or as otherwise described in sections 58-841, 58-844, 58-845, 58-860, and 58-861. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, the rights, duties, and obligations of the authority with respect to such bonds, and the manner of sale thereof shall be governed by the act insofar as applicable.

The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or earlier redemption of such outstanding bonds either on their earliest or any subsequent redemption date, upon the purchase of such bonds, or at the maturity of such bonds and may, pending such application, be placed in escrow to be applied to such purchase, retirement at maturity, or earlier redemption.

Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America or obligations the timely payment of principal and interest on which is fully guaranteed by the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment of the principal of and interest and redemption premium, if any, on the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. Only after the terms of the escrow have been fully satisfied and carried out may any balance of such proceeds, interest, income, or profits earned or realized on the investments thereof be returned to the eligible institution for whose benefit the refunded bonds were issued for use by it in any lawful manner.

All such bonds shall be subject to the act in the same manner and to the same extent as other revenue bonds issued pursuant to the act.

Source: Laws 1981, LB 321, § 43; Laws 1983, LB 159, § 6; Laws 1993, LB 465, § 23; R.S.1943, (1994), § 79-2943; Laws 1995, LB 5, § 43; R.S.1943, (2008), § 85-1743; Laws 2013, LB170, § 46.

58-847 Bond issuance; state or political subdivision; no obligation; statement; expenses.

Bonds issued pursuant to the Nebraska Educational, Health, and Social Services Finance Authority Act shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be a limited obligation of the authority payable solely from the funds, securities, or government securities pledged for their payment as authorized in the act unless such bonds are refunded by refunding bonds issued under the act, which refunding bonds shall be payable solely from funds, securities, or government securities pledged for their payment as authorized in the act. All such revenue bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not an obligation of the State of Nebraska or of any political subdivision thereof but are limited obligations of the authority payable solely from revenue, securities, or government securities, as the case may be, pledged for their payment. All expenses incurred in carrying out the act shall be payable solely from funds provided under the authority of the act, and nothing contained in the act shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision thereof.

Source: Laws 1981, LB 321, § 44; Laws 1993, LB 465, § 24; R.S.1943, (1994), § 79-2944; Laws 1995, LB 5, § 44; R.S.1943, (2008), § 85-1744; Laws 2013, LB170, § 47.

58-848 Authority; rents or loan payments; use.

Except for projects financed or refinanced pursuant to sections 58-844 and 58-845, the authority shall fix, revise, charge, and collect rents or loan payments for the use of or payment for each project and contract with any eligible institution in respect thereof. Each lease or loan agreement entered into by the authority with an eligible institution shall provide that the rents or loan payments payable by the eligible institution shall be sufficient at all times (1) to pay the eligible institution's share of the administrative costs and expenses of

the authority, (2) to pay the authority's cost, if any, of maintaining, repairing, and operating the project and each and every portion thereof, (3) to pay the principal of, the premium, if any, and the interest on outstanding bonds of the authority issued with respect to such project as the same shall become due and payable, and (4) to create and maintain reserves which may be provided for in the resolution or trust indenture relating to such bonds of the authority.

With respect to projects financed pursuant to sections 58-844 and 58-845, the authority shall require the eligible institution involved to enter into loan or other financing agreements obligating such eligible institution to make payments sufficient to accomplish the purposes described in this section.

Source: Laws 1981, LB 321, § 45; R.S.1943, (1994), § 79-2945; Laws 1995, LB 5, § 45; R.S.1943, (2008), § 85-1745; Laws 2013, LB170, § 48.

58-849 Money received by authority; deemed trust funds; investment.

All money received by the authority, whether as proceeds from the sale of bonds, from revenue, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in the Nebraska Educational, Health, and Social Services Finance Authority Act but, prior to the time when needed for use, may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America, obligations issued by agencies of the United States of America, any obligations of the United States of America or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341, except that any funds pledged to secure a bond issue shall be invested in the manner permitted by the resolution or trust indenture securing such bonds. Such funds shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in such accounts shall be paid out on checks signed by the executive director or other officers or employees of the authority as the authority authorizes. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies may give security for the deposits, except to the extent provided otherwise in the resolution authorizing the issuance of the related bonds or in the trust indenture securing such bonds. The resolution authorizing the issuance of such bonds or the trust indenture securing such bonds shall provide that any officer to whom or any bank or trust company to which such money is entrusted shall act as trustee of such money and shall hold and apply the same for the purposes of the Nebraska Educational, Health, and Social Services Finance Authority Act, subject to the act, and of the authorizing resolution or trust indenture.

Source: Laws 1981, LB 321, § 46; Laws 1993, LB 465, § 25; R.S.1943, (1994), § 79-2946; Laws 1995, LB 5, § 46; R.S.1943, (2008), § 85-1746; Laws 2013, LB170, § 49.

58-850 Bondholders and trustee; enforcement of rights.

Any holder of bonds or of any of the coupons appertaining thereto issued under the Nebraska Educational, Health, and Social Services Finance Authority Act and the trustee under any trust indenture, except to the extent the rights

given in the act may be restricted by the resolution or trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state, the act, or such trust indenture or resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by the act or by such trust indenture or resolution to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, rents, loan payments, fees, and charges authorized in the act and required by the provisions of such resolution or trust indenture to be fixed, established, and collected.

Such rights shall include the right to compel the performance of all duties of the authority required by the act or the resolution or trust indenture to enjoin unlawful activities and, in the event of default with respect to the payment of any principal of and premium, if any, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the resolution or trust indenture, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate a project, the revenue of which is pledged to the payment of the principal of and premium, if any, and interest on such bonds, with full power to pay and to provide for payment of the principal of and premium, if any, and interest on such bonds, and with such powers, subject to the direction of the court, as are permitted by law and are accorded receivers in general equity cases, excluding any power to pledge additional revenue of the authority to the payment of such principal, premium, and interest, and to foreclose the mortgage on the project in the same manner as the foreclosure of a mortgage on real estate of private corporations.

Source: Laws 1981, LB 321, § 47; Laws 1993, LB 465, § 26; R.S.1943, (1994), § 79-2947; Laws 1995, LB 5, § 47; R.S.1943, (2008), § 85-1747; Laws 2013, LB170, § 50.

58-851 Act, how construed.

The Nebraska Educational, Health, and Social Services Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

Source: Laws 1981, LB 321, § 48; Laws 1993, LB 465, § 27; R.S.1943, (1994), § 79-2948; Laws 1995, LB 5, § 48; R.S.1943, (2008), § 85-1748; Laws 2013, LB170, § 51.

58-852 Authority; journal; public records.

All final actions of the authority shall be recorded in a journal, and the journal and all instruments and documents relating thereto shall be kept on file at the office of the authority and shall be open to the inspection of the public at all reasonable times.

Source: Laws 1981, LB 321, § 49; R.S.1943, (1994), § 79-2949; Laws 1995, LB 5, § 49; R.S.1943, (2008), § 85-1749; Laws 2013, LB170, § 52.

58-853 Authority; public purpose; exemptions from taxation.

The exercise of the powers granted by the Nebraska Educational, Health, and Social Services Finance Authority Act shall be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare, and

prosperity, for the fostering, encouragement, protection, and improvement of their health and living conditions, and for the development of their intellectual and mental capacities and skills, and as the operation, maintenance, financing, or refinancing of a project or program by the authority or its agent will constitute the performance of essential governmental functions and serve a public purpose, neither the authority nor its agent shall be required to pay any taxes or assessments, upon or with respect to a project or any property acquired or used by the authority or its agent under the act, upon the income therefrom, or upon any other amounts received by the authority in respect thereof, including payments of principal of or premium or interest on or in respect of any securities purchased pursuant to section 58-844 or any government securities involved in a plan of financing pursuant to section 58-845. The bonds issued under the act, the interest thereon, the proceeds received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received upon redemption prior to maturity, proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the State of Nebraska for all purposes except the state inheritance tax.

Source: Laws 1981, LB 321, § 50; Laws 1993, LB 465, § 28; R.S.1943, (1994), § 79-2950; Laws 1995, LB 5, § 50; R.S.1943, (2008), § 85-1750; Laws 2013, LB170, § 53.

58-854 Bondholders; pledge; agreement of the state.

The State of Nebraska does hereby pledge to and agree with the holders of any obligations issued under the Nebraska Educational, Health, and Social Services Finance Authority Act and with those parties who may enter into contracts with the authority pursuant to the act that the state will not limit or alter the rights vested in the authority until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority, except that nothing contained in this section shall preclude such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority.

Source: Laws 1981, LB 321, § 51; Laws 1993, LB 465, § 29; R.S.1943, (1994), § 79-2951; Laws 1995, LB 5, § 51; R.S.1943, (2008), § 85-1751; Laws 2013, LB170, § 54.

58-855 Act; supplemental to other laws.

The Nebraska Educational, Health, and Social Services Finance Authority Act shall be deemed to provide a complete, additional, and alternative method for doing the things authorized in the act and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under the act need not comply with the requirements of any other law applicable to the issuance of bonds, and the acquisition, construction, improvement, equipment, and renovation of a project pursuant to the act by the authority need not comply with the requirements of any competitive bidding law or other restriction imposed on the procedure for award of contracts for the acquisition, construction, improvement, equipment, and renovation of a project or the lease, sale, or disposition of property of the authority, except that if the prospective lessee so requests in writing, the authority shall

call for construction bids in such manner as shall be determined by the authority with the approval of such lessee. Except as otherwise expressly provided in the act, none of the powers granted to the authority under the act shall be subject to the supervision of or regulation by or require the approval or consent of any municipality, political subdivision, commission, board, body, bureau, official, or agency or the state.

Source: Laws 1981, LB 321, § 52; Laws 1993, LB 465, § 30; R.S.1943, (1994), § 79-2952; Laws 1995, LB 5, § 52; R.S.1943, (2008), § 85-1752; Laws 2013, LB170, § 55.

58-856 Act; provisions controlling.

To the extent that the Nebraska Educational, Health, and Social Services Finance Authority Act is inconsistent with the provisions of any general statute or special act or parts thereof, the Nebraska Educational, Health, and Social Services Finance Authority Act shall be deemed controlling.

Source: Laws 1981, LB 321, § 53; Laws 1993, LB 465, § 31; R.S.1943, (1994), § 79-2953; Laws 1995, LB 5, § 53; R.S.1943, (2008), § 85-1753; Laws 2013, LB170, § 56.

58-857 Nebraska Health Education Assistance Loan Program; established.

There is hereby established, in accordance with Public Law 94-484, the Nebraska Health Education Assistance Loan Program, to be financed by the authority in the manner provided in the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1983, LB 159, § 7; Laws 1993, LB 465, § 32; R.S.1943, (1994), § 79-2954; Laws 1995, LB 5, § 54; R.S.1943, (2008), § 85-1754; Laws 2013, LB170, § 57.

58-858 Nebraska Health Education Assistance Loan Program; authority; powers.

The authority may:

- (1) Make loans;
- (2) Participate in the financing of loans;
- (3) Purchase or participate in the purchase of loans;
- (4) Sell or participate in the sale of loans;
- (5) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (4) of this section;
- (6) Do all things necessary and convenient to carry out the purposes of sections 58-857 to 58-862 in connection with the administering and servicing of loans, including contracting with any person, firm, or other body, public or private;
- (7) Enter into any agreements necessary to effect the guarantee, insuring, administering, or servicing of loans;
- (8) Adopt and promulgate rules and regulations governing and establish standards for participation in the program created by section 58-857, and establish other administrative procedures consistent with Public Law 94-484; and

(9) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

Source: Laws 1983, LB 159, § 8; R.S.1943, (1994), § 79-2955; Laws 1995, LB 5, § 55; R.S.1943, (2008), § 85-1755; Laws 2013, LB170, § 58.

58-859 Nebraska Health Education Assistance Loan Program; loans; how funded.

Any loan made, purchased, or caused to be made or purchased pursuant to section 58-858 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to sections 58-857 to 58-862. The resolution or trust indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 58-843 as the authority shall deem appropriate and any other provisions, not in violation of law, as the authority shall deem reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans, to purchase loans, to cause loans to be made or purchased, to pay financing costs, including, but not limited to, legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

Source: Laws 1983, LB 159, § 9; R.S.1943, (1994), § 79-2956; Laws 1995, LB 5, § 56; R.S.1943, (2008), § 85-1756; Laws 2013, LB170, § 59.

58-860 Nebraska Health Education Assistance Loan Program; bonds or other obligations; how paid.

Notwithstanding section 58-841, all bonds, notes, or other obligations issued by the authority for the Nebraska Health Education Assistance Loan Program shall be payable out of the revenue generated in connection with loans funded under sections 58-857 to 58-862, or from reserves or other money available for such purpose as may be designated in the resolution of the authority under which the bonds, notes, or other obligations are issued or as may be designated in a trust indenture authorized by the authority.

Source: Laws 1983, LB 159, § 10; R.S.1943, (1994), § 79-2957; Laws 1995, LB 5, § 57; R.S.1943, (2008), § 85-1757; Laws 2013, LB170, § 60.

58-861 Nebraska Health Education Assistance Loan Program; bonds; security.

Notwithstanding section 58-843, the principal of and interest on any bonds issued by the authority for the Nebraska Health Education Assistance Loan Program shall be secured by a pledge of the revenue and other money out of which such principal and interest shall be made payable and may be secured by a trust indenture, mortgage, or deed of trust, including an assignment of a loan

or contract right of the authority pursuant to a loan, covering all or any part of a loan from which the revenue or receipts so pledged may be derived.

Source: Laws 1983, LB 159, § 11; R.S.1943, (1994), § 79-2958; Laws 1995, LB 5, § 58; R.S.1943, (2008), § 85-1758; Laws 2013, LB170, § 61.

58-862 Nebraska Health Education Loan Repayment Fund; created; use.

There is hereby created a separate fund, to be known as the Nebraska Health Education Loan Repayment Fund, which shall consist of all revenue generated in connection with loans funded pursuant to the Nebraska Educational, Health, and Social Services Finance Authority Act. The authority may pledge revenue received or to be received by the fund to secure bonds, notes, or other obligations issued pursuant to the act. The authority may create such subfunds or accounts within the fund as it deems necessary or advisable.

Source: Laws 1983, LB 159, § 12; Laws 1993, LB 465, § 33; R.S.1943, (1994), § 79-2959; Laws 1995, LB 5, § 59; R.S.1943, (2008), § 85-1759; Laws 2013, LB170, § 62.

58-863 Nebraska Student Loan Assistance Program; established.

There is hereby established the Nebraska Student Loan Assistance Program to be financed by the authority in the manner provided in the Nebraska Educational, Health, and Social Services Finance Authority Act.

Source: Laws 1993, LB 465, § 34; R.S.1943, (1994), § 79-2961; Laws 1995, LB 5, § 60; R.S.1943, (2008), § 85-1760; Laws 2013, LB170, § 63.

58-864 Nebraska Student Loan Assistance Program; authority; powers.

The authority may:

(1) Make loans to private institutions of higher education to assist such institutions in providing loans to their full-time students to assist them in financing the cost of their education while taking courses leading to an academic degree;

(2) Participate in the financing of such loans;

(3) Sell or participate in the sale of such loans;

(4) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (3) of this section;

(5) Do all things necessary and convenient to carry out the purposes of this section and section 58-865 in connection with the administering of such loans, including contracting with any person, firm, or other body, public or private;

(6) Enter into any agreements necessary to effect the guarantee, insuring, or administering of such loans;

(7) Adopt and promulgate rules and regulations governing and establish standards for participation in the Nebraska Student Loan Assistance Program; and

(8) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

Source: Laws 1993, LB 465, § 35; R.S.1943, (1994), § 79-2962; Laws 1995, LB 5, § 61; R.S.1943, (2008), § 85-1761; Laws 2013, LB170, § 64.

58-865 Nebraska Student Loan Assistance Program; loans; how funded.

Any loan made or caused to be made or purchased pursuant to section 58-864 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to this section and sections 58-841, 58-846, 58-863, and 58-864. The resolution or trust indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 58-843 as the authority deems appropriate and any other provisions, not in violation of law, as the authority deems reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans to such institutions and cause loans to be made by the institutions to their qualified students, to pay financing costs, including legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

Source: Laws 1993, LB 465, § 36; R.S.1943, (1994), § 79-2963; Laws 1995, LB 5, § 62; R.S.1943, (2008), § 85-1762; Laws 2013, LB170, § 65.

58-866 Change in name; effect.

(1) It is the intent of the Legislature that the changes made by Laws 1993, LB 465, in the name of the Nebraska Educational Facilities Authority Act to the Nebraska Educational Finance Authority Act and in the name of the Nebraska Educational Facilities Authority to the Nebraska Educational Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 9, 1993.

(2) It is the intent of the Legislature that the changes made by Laws 2013, LB170, in the name of the Nebraska Educational Finance Authority Act to the Nebraska Educational, Health, and Social Services Finance Authority Act and in the name of the Nebraska Educational Finance Authority to the Nebraska Educational, Health, and Social Services Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 6, 2013.

Source: Laws 1993, LB 465, § 37; R.S.1943, (1994), § 79-2964; Laws 1995, LB 5, § 63; R.S.1943, (2008), § 85-1763; Laws 2013, LB170, § 66.



CHAPTER 59

MONOPOLIES AND UNLAWFUL COMBINATIONS

Article.

15. Cigarette Sales.
 - (b) Grey Market Sales. 59-1520, 59-1523.
16. Consumer Protection Act. 59-1608.04.
17. Seller-Assisted Marketing Plan. 59-1722.

ARTICLE 15

CIGARETTE SALES

(b) GREY MARKET SALES

Section

- 59-1520. Prohibited acts.
59-1523. Disciplinary actions; contraband.

(b) GREY MARKET SALES

59-1520 Prohibited acts.

It is unlawful for any person to:

(1) Sell or distribute in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or import or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including, but not limited to:

(a) The filing of ingredients lists pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, as such section existed on January 1, 2011;

(b) The permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(c) The rotation of label statements pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333(c), as such section existed on January 1, 2011;

(d) The restrictions on the importation, transfer, and sale of previously exported tobacco products pursuant to 19 U.S.C. 1681 et seq. and Chapter 52 of the Internal Revenue Code, 26 U.S.C. 5701 et seq., as such sections existed on January 1, 2011; and

(e) The federal trademark and copyright laws;

(2) Alter a package of cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(a) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(b) Any health warning that is not the precise package warning statement in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(3) Affix any stamps or meter impression required pursuant to sections 77-2601 to 77-2615 to the package of any cigarettes that does not comply with the requirements of subdivision (1) of this section or that is altered in violation of subdivision (2) of this section; and

(4) Import or reimport into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States.

Source: Laws 2001, LB 358, § 2; Laws 2011, LB590, § 1.

59-1523 Disciplinary actions; contraband.

(1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the license or licenses of any person licensed under sections 28-1418 to 28-1429.03 or sections 77-2601 to 77-2622.

(2) Cigarettes that are acquired, held, owned, possessed, transported, sold, or distributed in or imported into this state in violation of section 59-1520 are declared to be contraband goods and are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be declared to be contraband goods whether the violation of section 59-1520 is knowing or otherwise.

Source: Laws 2001, LB 358, § 5; Laws 2011, LB590, § 2; Laws 2014, LB863, § 27.

Effective date April 10, 2014.

ARTICLE 16

CONSUMER PROTECTION ACT

Section

59-1608.04. State Settlement Cash Fund; created; use; investment; transfer.

59-1608.04 State Settlement Cash Fund; created; use; investment; transfer.

(1) The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. The fund may be expended for any allowable legal purposes as determined by the Attorney General. Transfers from the State Settlement Cash Fund may be made at the direction of the Legislature to the Nebraska Capital Construction Fund. To provide necessary financial accounta-

bility and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settlement Cash Fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall transfer two million five hundred thousand dollars from the State Settlement Cash Fund to the Nebraska Capital Construction Fund on July 1, 2013, or as soon thereafter as administratively possible.

Source: Laws 2006, LB 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7; Laws 2011, LB549, § 8; Laws 2013, LB199, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 17

SELLER-ASSISTED MARKETING PLAN

Section

59-1722. Transaction; seller complied with Federal Trade Commission trade regulation rule; exempt; exception; conditions; fee.

59-1722 Transaction; seller complied with Federal Trade Commission trade regulation rule; exempt; exception; conditions; fee.

(1) Any transaction in which the seller has complied with the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. 436, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The seller uses a disclosure document prepared in accordance with either the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. 436, or the then current guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any representations in connection with such offer or sale to any prospective purchaser in Nebraska, the seller files a notice with the Department of Banking and Finance which contains (i) the name, address, and telephone number of the seller and the name under which the seller intends to do business and (ii) a brief description of the plan offered by the seller; and

(c) The seller pays a filing fee of one hundred dollars.

(2) The department may request a copy of the disclosure document upon receipt of a written complaint or inquiry regarding the seller or upon a

reasonable belief that a violation of the Seller-Assisted Marketing Plan Act has occurred or may occur. The seller shall provide such copy within ten business days of receipt of the request.

(3) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The Director of Banking and Finance may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities if the director finds that such an order is in the public interest or is necessary for the protection of purchasers. An order shall not be entered without appropriate prior notice to all interested parties, an opportunity for hearing, and written findings of fact and conclusions of law. If the public interest or the protection of purchasers so requires, the director may by order summarily deny or revoke an exemption specified in this section pending final determination of any proceedings under this section. An order under this section shall not operate retroactively.

Source: Laws 1979, LB 180, § 22; Laws 1993, LB 218, § 9; Laws 2001, LB 53, § 108; Laws 2013, LB214, § 11.

MOTOR VEHICLES

CHAPTER 60

MOTOR VEHICLES

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60-101 Act, how cited.

Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws 2009, LB202, § 10; Laws 2010, LB650, § 3; Laws 2011, LB289, § 6; Laws 2012, LB1155, § 2.

60-102 Definitions, where found.

For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

Source: Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2; Laws 2010, LB650, § 4; Laws 2012, LB1155, § 3.

60-103 All-terrain vehicle, defined.

All-terrain vehicle means any motorized off-highway device which (1) is fifty inches or less in width, (2) has a dry weight of twelve hundred pounds or less, (3) travels on three or more nonhighway tires, and (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

Source: Laws 2005, LB 276, § 3; Laws 2014, LB814, § 3.
Operative date October 1, 2014.

60-105 Body, defined.

Body means that portion of a vehicle which determines its shape and appearance and is attached to the frame. Body does not include the box or bed of a truck.

Source: Laws 2005, LB 276, § 5; Laws 2012, LB751, § 6.

60-111 Repealed. Laws 2012, LB 801, § 102.**60-116.01 Golf car vehicle, defined.**

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes.

Source: Laws 2012, LB1155, § 4.

60-119.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2007, LB286, § 5; Laws 2011, LB289, § 7.

60-121.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 5; Laws 2012, LB898, § 1.

60-123 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, and (9) electric personal assistive mobility devices.

Source: Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6; Laws 2010, LB650, § 6; Laws 2011, LB289, § 8; Laws 2012, LB1155, § 5.

60-126 Parts vehicle, defined.

Parts vehicle means a vehicle the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

Source: Laws 2005, LB 276, § 26; Laws 2011, LB241, § 1.

60-135.01 Utility-type vehicle, defined.

(1) Utility-type vehicle means any motorized off-highway device which (a) is seventy-four inches in width or less, (b) is not more than one hundred eighty inches, including the bumper, in length, (c) has a dry weight of two thousand pounds or less, and (d) travels on four or more nonhighway tires.

(2) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

Source: Laws 2010, LB650, § 7; Laws 2012, LB1155, § 6; Laws 2013, LB223, § 1; Laws 2014, LB814, § 4.
Operative date October 1, 2014.

60-137 Act; applicability.

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

(a) Farm trailers;

(b) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and

(c) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2)(a) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(b) All new low-speed vehicles sold on or after January 1, 2012, shall be required to have a certificate of title. An owner of a low-speed vehicle sold prior to such date may apply for a certificate of title for such low-speed vehicle as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

(5) All new utility-type vehicles sold on or after January 1, 2011, shall be required to have a certificate of title. An owner of a utility-type vehicle sold prior to such date may apply for a certificate of title for such utility-type vehicle as provided in rules and regulations of the department.

Source: Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2; Laws 2010, LB650, § 9; Laws 2011, LB289, § 9.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-139 Certificate of title; vehicle identification number; required; when.

Except as provided in section 60-137, 60-138, 60-142, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

Source: Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3; Laws 2011, LB241, § 2.

60-140 Acquisition of vehicle; proof of ownership; effect.

(1) Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (a) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (b) a written instrument as required by section 60-1417, (c) an affidavit and notarized bill of sale as provided in section 60-142.01, or (d) a bill of sale for a parts vehicle as required by section 60-142.

(2) No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section. Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a vehicle.

Source: Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4; Laws 2009, LB202, § 11; Laws 2011, LB241, § 3.

60-142 Historical vehicle or parts vehicle; sale or transfer; parts vehicle; bill of sale; prohibited act; violation; penalty.

(1) The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

(2) No owner of a parts vehicle shall sell or otherwise dispose of the parts vehicle without delivering to the purchaser a bill of sale for the parts vehicle prescribed by the department. The bill of sale may include, but shall not be limited to, the vehicle identification number, the year, make, and model of the vehicle, the name and residential and mailing addresses of the owner and purchaser, the acquisition date, and the odometer statement provided for in section 60-192. A person who uses a bill of sale for a parts vehicle to transfer ownership of any vehicle that does not meet the definition of a parts vehicle shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5; Laws 2011, LB241, § 4.

60-142.03 Recognized car club; qualified car club representative; department; powers and duties.

(1) For purposes of this section, car club means an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.

(2) To become a recognized car club, a car club shall apply to the department. For a car club to become recognized, it must be a nonprofit organization with established bylaws and at least twenty members. The applicant shall provide a copy of the bylaws and a membership list to the department. The department shall determine if a car club qualifies as a recognized car club. The determination of the department shall be final and nonappealable.

(3) A member of a recognized car club may apply to the department to become a qualified car club representative. Each qualified car club representative shall be designated by the president or director of the local chapter of the recognized car club of which he or she is a member. The department shall identify and maintain a list of qualified car club representatives. A qualified car club representative may apply to be placed on the list of qualified car club representatives by providing the department with his or her name, address, and telephone number, the name, address, and telephone number of the recognized car club he or she represents, a copy of the designation of the representative by the president or director of the local chapter of the recognized car club, and such other information as may be required by the department. The department may place a qualified car club representative on the list upon receipt of a completed application and may provide each representative with information for inspection of vehicles and parts. The determination of the department regarding designation of an individual as a qualified car club representative and placement on the list of qualified car club representatives shall be final and nonappealable. The department shall distribute the list to county treasurers.

(4) When a qualified car club representative inspects vehicles and replacement parts, he or she shall determine whether all major component parts used in the assembly of a vehicle are original or essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, including the appropriate engine, body material, body shape, and other requirements as prescribed by the department. After such inspection, the representative shall provide the owner with a statement in

the form prescribed by the department which includes the findings of the inspection. No qualified car club representative shall charge any fee for the inspection or the statement. No qualified car club representative shall provide a statement for any vehicle owned by such representative or any member of his or her immediate family.

(5) The director may summarily remove a person from the list of qualified car club representatives upon written notice. Such person may reapply for inclusion on the list upon presentation of suitable evidence satisfying the director that the cause for removal from the list has been corrected, eliminated, no longer exists, or will not affect or interfere with the person's judgment or qualifications for inspection of vehicles to determine whether or not any replacement parts are essentially the same in design and material to that originally supplied by the original manufacturer for the specific year, make, and model of vehicle.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2006, LB 663, § 8; Laws 2012, LB801, § 28.

60-142.08 Low-speed vehicle; application for certificate of title indicating year and make; procedure.

If a low-speed vehicle does not have a manufacturer's vehicle identification number, the owner of the low-speed vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the low-speed vehicle, a statement that an inspection has been conducted on the low-speed vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the low-speed vehicle as the year application for title was made and the make of the low-speed vehicle.

Source: Laws 2011, LB289, § 10.

60-144 Certificate of title; issuance; filing; application; form.

(1)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county treasurer shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(b) The department shall issue and file certificates of title for Nebraska-based fleet vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(d) The department shall issue certificates of title pursuant to section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(2) If the owner of an all-terrain vehicle, a utility-type vehicle, or a minibike resides in Nebraska, the application shall be filed with the county treasurer of the county in which the owner resides.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, if a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, has situs in Nebraska, the application shall be filed with the county treasurer of the county in which the vehicle has situs.

(b) If a motor vehicle dealer licensed under the Motor Vehicle Industry Regulation Act, applies for a certificate of title for a vehicle, the application may be filed with the county treasurer of any county.

(4) If the owner of a vehicle is a nonresident, the application shall be filed in the county in which the transaction is consummated.

(5) The application shall be filed within thirty days after the delivery of the vehicle.

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164. All certificates of title issued by the division shall be issued in the manner prescribed for the county treasurer in section 60-152.

Source: Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3; Laws 2009, LB202, § 12; Laws 2010, LB650, § 11; Laws 2010, LB816, § 4; Laws 2011, LB212, § 2; Laws 2012, LB801, § 29.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized.

(1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county treasurer shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state.

(4) The identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against a vehicle and recorded on the vehicle's ownership records, the county treasurer shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The county treasurer or the department may also request an identification inspection of a vehicle to determine if it meets the definition of motor vehicle as defined in section 60-123.

Source: Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11; Laws 2012, LB801, § 30.

60-147 Mobile home or cabin trailer; application; contents; mobile home transfer statement.

(1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county treasurer shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Tax Commissioner. The mobile home transfer statement shall be filed by the applicant with the county treasurer of the county of application for title. The county treasurer shall issue a certificate of title to a mobile home but shall not deliver the certificate of title unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall not prevent the notation of a lien on the certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien.

Source: Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9; Laws 2009, LB202, § 13; Laws 2012, LB801, § 31.

60-148 Assignment of distinguishing identification number; when.

(1) Whenever a person applies for a certificate of title for a vehicle, the department shall assign a distinguishing identification number to the vehicle if the vehicle identification number is destroyed, obliterated, or missing. The owner of such a vehicle to which such number is assigned shall have such number affixed to such vehicle as provided in subsection (2) of this section and sign an affidavit on a form prepared by the department that such number has been attached. Before the certificate of title for an assigned number is released to the applicant by the county treasurer, the applicant shall also provide a statement that an inspection has been conducted.

(2) The department shall develop a metallic assigned vehicle identification number plate which can be permanently secured to a vehicle by rivets or a permanent sticker or other form of marking or identifying the vehicle with the distinguishing identification number as determined by the director. All distinguishing identification numbers shall contain seventeen characters in conformance with national standards. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle, utility-type vehicle, or minibike or assembled vehicle, the department shall use a distinguishing identification number. The department shall, upon application by an owner, provide the owner with a number plate or a permanent sticker or other form of marking or identification displaying a distinguishing identification number or the manufacturer's number.

(3) Any vehicle to which a distinguishing identification number is assigned shall be titled under such distinguishing identification number when titling of the vehicle is required under the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 48; Laws 2006, LB 663, § 14; Laws 2010, LB650, § 12; Laws 2012, LB801, § 32.

60-149 Application; documentation required.

(1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) Except for manufactured homes or mobile homes as provided in subsection (2) of this section, if a certificate of title has not previously been issued for

the vehicle in this state or if a certificate of title is unavailable pursuant to subsection (4) of section 52-1801, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate except as otherwise provided in subdivision (vii) of this subdivision;

(ii) A duly certified copy of the manufacturer's or importer's certificate;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle, a utility-type vehicle, or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law;

(vi) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, or 60-142.05; or

(vii) A manufacturer's or importer's certificate and an affidavit by the owner affirming ownership in the case of a minitruck.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable pursuant to section 52-1801, the application shall be accompanied by proof of ownership in the form of:

(i) A duly assigned manufacturer's or importer's certificate;

(ii) A certificate of title from another state;

(iii) A court order issued by a court of record;

(iv) Evidence of ownership as provided for in section 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, or 60-2401 to 60-2411; or

(v) Assessment records for the manufactured home or mobile home from the county assessor and an affidavit by the owner affirming ownership.

(b) If the applicant cannot produce proof of ownership described in subdivision (a) of this subsection, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county treasurer to issue a certificate of title, as the case may be.

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(4) The county treasurer shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

Source: Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15; Laws 2010, LB650, § 13; Laws 2010, LB933, § 1; Laws 2012, LB801, § 33.

60-150 Application; county treasurer; duties.

The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records available. If he or she is satisfied that the applicant is the owner of such vehicle and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with the appropriate seal.

Source: Laws 2005, LB 276, § 50; Laws 2012, LB801, § 34.

60-151 Certificate of title obtained in name of purchaser; exceptions.

The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 60-331.02, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

Source: Laws 2005, LB 276, § 51; Laws 2011, LB163, § 14.

60-152 Certificate of title; issuance; delivery of copies; seal; county treasurer; duties.

(1) The county treasurer shall issue a certificate of title for a vehicle in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the department, shall be transmitted on the day of issuance to the department. The county treasurer shall sign and affix the appropriate seal to the original certificate of title and, if there are no liens on the vehicle, deliver the certificate to the applicant. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164 or 60-165.

(2) The county treasurers of the various counties shall adopt a circular seal with the words County Treasurer of (insert name) County thereon. Such seal shall be used by the county treasurer or the deputy or legal authorized agent of such officer, without charge to the applicant, on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a Nebraska certificate of title.

(3) The department shall prescribe a uniform method of numbering certificates of title.

(4) The county treasurer shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a vehicle, and (d) be authorized to destroy all certificates of title and all support-

ing records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12; Laws 2009, LB202, § 14; Laws 2012, LB801, § 35.

60-153 Certificate of title; form; contents; secure power-of-attorney form.

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county treasurer's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words "void if altered". A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle, utility-type vehicle, or minibike shall include the words "not to be registered for road use".

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 60-331.02.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

Source: Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13; Laws 2010, LB650, § 14; Laws 2011, LB163, § 15; Laws 2012, LB801, § 36.

60-154 Fees.

(1)(a) For each original certificate of title issued by a county for a motor vehicle or trailer, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two

dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; forty-five cents to the Nebraska State Patrol Cash Fund; and ten cents to the Nebraska Motor Vehicle Industry Licensing Fund.

(b) For each original certificate of title issued by a county for an all-terrain vehicle, a utility-type vehicle, or a minibike, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; and fifty-five cents to the Nebraska State Patrol Cash Fund.

(2) For each original certificate of title issued by the department for a vehicle except as provided in section 60-159.01, the fee shall be ten dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Six dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 54; Laws 2006, LB 663, § 16; Laws 2006, LB 1061, § 7; Laws 2010, LB650, § 15; Laws 2012, LB751, § 7.

60-155 Notation of lien; fees.

(1) For each notation of a lien by a county, the fee shall be seven dollars. Two dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. One dollar shall be remitted to the State Treasurer for credit to the General Fund.

(2) For each notation of a lien by the department, the fee shall be seven dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Three dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 55; Laws 2013, LB30, § 1.

60-156 Duplicate certificate of title; fees.

(1) For each duplicate certificate of title issued by a county for a vehicle, the fee shall be fourteen dollars. Ten dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) For each duplicate certificate of title issued by the department for a vehicle, the fee shall be fourteen dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Ten dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 56; Laws 2013, LB30, § 2.

60-161 County treasurer; remit funds; when.

The county treasurer shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the fifteenth day of the

month following collection. The county treasurer shall credit the fees not due the State Treasurer to the county general fund.

Source: Laws 2005, LB 276, § 61; Laws 2011, LB135, § 2; Laws 2012, LB801, § 37.

60-162 Department; powers; rules and regulations.

(1) The department may adopt and promulgate rules and regulations to insure uniform and orderly operation of the Motor Vehicle Certificate of Title Act, and the county treasurer of each county shall conform to such rules and regulations and proceed at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of the act.

(2) The department shall receive all instruments relating to vehicles forwarded to it by the county treasurers under the act and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties.

(3) The department shall provide and furnish the forms required by the act, except manufacturers' or importers' certificates.

(4) The county treasurer shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

Source: Laws 2005, LB 276, § 62; Laws 2012, LB801, § 38.

60-162.01 Repealed. Laws 2012, LB 801, § 102.

60-163 Department; cancellation of certificate of title; procedure.

(1) The department shall check with its records all duplicate certificates of title received from a county treasurer. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the same, and such county treasurer shall thereupon enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(2) If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

Source: Laws 2005, LB 276, § 63; Laws 2012, LB801, § 39.

60-164 Department; implement electronic title and lien system for vehicles; liens on motor vehicles; when valid; notation on certificate; inventory, excep-

tion; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.

(1) The department shall implement an electronic title and lien system for vehicles no later than January 1, 2011. The director shall designate the date for the implementation of the system. Beginning on the implementation date, the holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a vehicle may file a lien electronically as prescribed by the department. Beginning on the implementation date, upon receipt of an application for a certificate of title for a vehicle, any lien filed electronically shall become part of the electronic certificate of title record created by the county treasurer or department maintained on the electronic title and lien system. Beginning on the implementation date, if an application for a certificate of title indicates that there is a lien or encumbrance on a vehicle or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for motor vehicle dealers and lienholders who participate in the system by a method determined by the director.

(2) Except as provided in section 60-165, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a vehicle. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made electronically as prescribed in subsection (1) of this section or by the county treasurer or department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which a vehicle is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is required to be licensed as provided in the Motor Vehicle Industry Regulation Act and is in the business of selling such vehicles, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such vehicle created by such person or corporation as debtor without the notation of lien on the certificate of title. A buyer of a vehicle at retail from a dealer required to be licensed as provided in the Motor Vehicle Industry Regulation Act shall take such vehicle free of any security interest. A purchase-money security interest, as defined in section 9-103, Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches.

(3) Subject to subsections (1) and (2) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title or an electronic certificate of title record and all liens noted electronically as prescribed in subsection (1) of this section shall take priority according to the order of time in

which the same are noted by the county treasurer or department. Exposure for sale of any vehicle by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such vehicle shall not render the same void or ineffective as against the creditors of such owner or holder of subsequent liens, security agreements, or encumbrances upon such vehicle.

(4) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department or to any county treasurer, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The owner of a vehicle may present a valid out-of-state certificate of title issued to such owner for such vehicle with a notation of lien on such certificate of title and the prescribed fee to the county treasurer or department and have the notation of lien made on the new certificate of title issued pursuant to section 60-144 without presenting a copy of the lien instrument. The county treasurer or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of the office. If noted by a county treasurer, he or she shall on that day notify the department which shall note the lien on its records. The county treasurer or the department shall also indicate by appropriate notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(5) A transaction does not create a sale or a security interest in a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the vehicle.

(6) The county treasurer or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county treasurer or the department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county treasurer or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer or the department for the purpose of showing such other lien on such certificate of title within fifteen days after the date of notice shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(7) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 60-154, and, if a printed certificate of title exists, the presentation of the certificate of title, the county treasurer or department shall make notation of such other lien. If the certificate of title is not an electronic certificate of title record, the county treasurer or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the

county treasurer or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county treasurer or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

(8) When a lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the certificate of title over his, her, or its signature and deliver the certificate of title to the county treasurer or the department, which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county treasurer, he or she shall on that day notify the department which shall note the cancellation on its records. The county treasurer or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge. For an electronic certificate of title record, the lienholder shall, within fifteen days after payment is received when such lien is discharged, notify the department electronically or provide written notice of such lien release, in a manner prescribed by the department, to the county treasurer or department. The department shall note the cancellation of lien and, if no other liens exist, issue the certificate of title to the owner or as otherwise directed by the owner or lienholder. If the holder of the title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14; Laws 2008, LB756, § 3; Laws 2008, LB953, § 3; Laws 2009, LB202, § 15; Laws 2010, LB650, § 17; Laws 2010, LB816, § 5; Laws 2012, LB801, § 40.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-165 Security interest in all-terrain vehicle, minibike, utility-type vehicle, or low-speed vehicle; perfection; priority; notation of lien; when.

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, in a utility-type vehicle so perfected before, on, or after January 1, 2011, or in a low-speed vehicle so perfected before, on, or after January 1, 2012, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title is issued and a notation of lien is made as provided in section 60-164.

(2) Any lien noted on the face of an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title or on an electronic certificate of title record pursuant to subsection (1), (3), (4), (5), or (6) of this section, on behalf of the holder of a security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle to permit notation of a lien on the certificate of title or on an electronic certificate of title record and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(5) If the owner of a utility-type vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2011, the security interest holder may obtain a certificate of title in the name of the owner of the utility-type vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(6) If the owner of a low-speed vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2012, the security interest holder may obtain a certificate of title in the name of the owner of the low-speed vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(7) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle shall be governed by the laws under which it was perfected.

Source: Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16; Laws 2010, LB650, § 18; Laws 2011, LB289, § 11.

60-166 New certificate of title; issued when; proof required; processing of application.

(1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of

satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be.

(2) If from the records of the county treasurer or the department there appear to be any liens on such vehicle, such certificate of title shall comply with section 60-164 or 60-165 regarding such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15; Laws 2009, LB202, § 18; Laws 2012, LB751, § 8; Laws 2012, LB801, § 41.

60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.

(1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department or to any county treasurer for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county treasurer, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county treasurer shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county treasurer may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county treasurer to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county treasurer prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon

the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county treasurer or the department for cancellation.

Source: Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16; Laws 2012, LB751, § 9; Laws 2012, LB801, § 42.

60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.

The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county treasurer or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county treasurer or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county treasurer or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate of title, the department shall cancel the certificate of title. This section does not apply when noting a lien in accordance with subsection (6) of section 60-164.

Source: Laws 2007, LB286, § 17; Laws 2009, LB202, § 19; Laws 2012, LB801, § 43.

60-169 Vehicle; certificate of title; surrender and cancellation; when required; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.

(1)(a) Except as otherwise provided in subdivision (b) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the department. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon the records and shall notify the department of such cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b)(i) In the case of a mobile home or manufactured home for which a certificate of title has been issued, if such mobile home or manufactured home is affixed to real property in which each owner of the mobile home or manufactured home has any ownership interest, the certificate of title may be surrendered for cancellation to the county treasurer of the county where such mobile home or manufactured home is affixed to real property if at the time of surrender the owner submits to the county treasurer an affidavit of affixture on a form provided by the department that contains all of the following, as applicable:

(A) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(B) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(C) The legal description of the real property upon which the mobile home or manufactured home is affixed and the names of all of the owners of record of the real property;

(D) A statement that the mobile home or manufactured home is affixed to the real property;

(E) The written consent of each holder of a lien duly noted on the certificate of title to the release of such lien and the cancellation of the certificate of title;

(F) A copy of the certificate of title surrendered for cancellation; and

(G) The name and address of an owner, a financial institution, or another entity to which notice of cancellation of the certificate of title may be delivered.

(ii) The person submitting an affidavit of affixture pursuant to subdivision (b)(i) of this subsection shall swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement in the affidavit may subject the person to penalties relating to perjury under section 28-915.

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county treasurer, along with the affidavit required by subdivision (1)(b) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county treasurer shall be entitled to collect fees from the person submitting the affidavit in accordance with section 33-109 to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, the county treasurer or designated county official shall not issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

(3) If a mobile home or manufactured home is affixed to real estate before June 1, 2006, a person who is the holder of a lien or security interest in both the mobile home or manufactured home and the real estate to which it is affixed on such date may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real estate.

(4) A mobile home or manufactured home for which the certificate of title has been canceled and for which an affidavit of affixture has been duly recorded pursuant to subsection (2) of this section shall be treated as part of the real estate upon which such mobile home or manufactured home is located. Any lien thereon shall be perfected and enforced in the same manner as a lien on real estate. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only as a part of the real estate to which it is affixed.

(5)(a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(b) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured

home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(b) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

(b) The affidavit of detachment shall contain all of the following:

(i) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(ii) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(iii) The legal description of the real estate from which the mobile home or manufactured home is to be detached and the names of all of the owners of record of the real estate;

(iv) A statement that the mobile home or manufactured home is to be detached from the real property;

(v) A statement that the certificate of title of the mobile home or manufactured home has previously been canceled;

(vi) The name of each holder of a lien of record against the real estate from which the mobile home or manufactured home is to be detached, with the written consent of each holder to the detachment; and

(vii) The name and address of an owner, a financial institution, or another entity to which the certificate of title may be delivered.

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured home is issued by the county treasurer or department. If a certificate of title is issued by the county treasurer or department, the mobile home or manufactured home is no longer considered part of the real property. Any lien thereon shall be perfected pursuant to section 60-164. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only by way of a certificate of title.

(7) For purposes of this section:

(a) A mobile home or manufactured home is affixed to real estate if the wheels, towing hitches, and running gear are removed and it is permanently attached to a foundation or other support system; and

(b) Ownership interest means the fee simple interest in real estate or an interest as the lessee under a lease of the real property that has a term that continues for at least twenty years after the recording of the affidavit under subsection (2) of this section.

(8) Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 2005, LB 276, § 69; Laws 2006, LB 663, § 19; Laws 2012, LB14, § 6; Laws 2012, LB751, § 10; Laws 2012, LB801, § 44.

60-170 Nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.

(1) When an insurance company authorized to do business in Nebraska acquires a vehicle which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county treasurer. A nontransferable certificate of title shall be issued in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160 and shall be on a form prescribed by the department.

(2) A vehicle which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under the Motor Vehicle Certificate of Title Act.

(3) When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the vehicle.

Source: Laws 2005, LB 276, § 70; Laws 2012, LB801, § 45.

60-171 Salvage branded certificate of title; terms, defined.

For purposes of sections 60-171 to 60-177:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model vehicle means a vehicle which has (a) a manufacturer's model year designation of, or later than, the year in which the vehicle was wrecked, damaged, or destroyed, or any of the six preceding years or (b)(i) in the case of vehicles other than all-terrain vehicles, utility-type vehicles, and minibikes, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter or (ii) in the case of all-terrain vehicles, utility-type vehicles, or minibikes, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(3) Manufacturer buyback means the designation of a vehicle with an alleged nonconformity when the vehicle (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(4) Previously salvaged means the designation of a rebuilt or reconstructed vehicle which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 60-146;

(5) Retail value means the actual cash value, fair market value, or retail value of a vehicle as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable vehicles with respect to condition and equipment; and

(6) Salvage means the designation of a vehicle which is:

(a) A late model vehicle which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the vehicle to its condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed;

(b) Voluntarily designated by the owner of the vehicle as a salvage vehicle by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the vehicle; or

(c) Flood damaged resulting from being submerged in water to the point that rising water has reached over the floorboard, has entered the passenger compartment, and has caused damage to any electrical, computerized, or mechanical components. Flood damaged specifically does not apply to a vehicle that an inspection, conducted by an insurance claim representative or a vehicle repairer, indicates:

(i) Has no electrical, computerized, or mechanical components damaged by water; or

(ii) Had one or more electrical, computerized, or mechanical components damaged by water and all such damaged components were repaired or replaced.

Source: Laws 2005, LB 276, § 71; Laws 2010, LB650, § 19; Laws 2014, LB446, § 1.

Effective date July 18, 2014.

60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued.

(1) When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle.

(2) If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer in the county

designated in section 60-144. The county treasurer shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the vehicle.

(3) An insurance company may apply to the department for a salvage branded certificate of title without obtaining a properly endorsed certificate of title from the owner or other evidence of ownership as prescribed by the department if it has been at least thirty days since the company obtained oral or written acceptance by the owner of an offer in an amount in settlement of a total loss. The insurance company shall submit an application form prescribed by the department for a salvage branded certificate of title accompanied by an affidavit from the insurance company that it has made at least two written attempts and has been unable to obtain the proper endorsed certificate of title from the owner following an oral or written acceptance by the owner of an offer of an amount in settlement of a total loss and evidence of settlement.

Source: Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19; Laws 2012, LB801, § 46; Laws 2014, LB701, § 1.
Effective date July 18, 2014.

60-175 Salvage branded or manufacturer buyback branded certificate of title; when issued; procedure.

Any person who acquires ownership of a salvage or manufacturer buyback vehicle for which he or she does not obtain a salvage branded or manufacturer buyback branded certificate of title shall surrender the certificate of title to the county treasurer and make application for a salvage branded or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the vehicle or any major component part of such vehicle or use of any major component part of the vehicle, whichever occurs earlier.

Source: Laws 2005, LB 276, § 75; Laws 2012, LB801, § 47.

60-178 Stolen vehicle; duties of law enforcement and department.

Every sheriff, chief of police, or member of the patrol having knowledge of a stolen vehicle shall immediately furnish the department with full information in connection therewith. The department, whenever it receives a report of the theft or conversion of such a vehicle, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, if applicable, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of such vehicle of such make. The department shall prepare a report listing such vehicles stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county treasurer of a copy of a certificate of title to such vehicle, the department shall immediately notify the rightful owner thereof and the county treasurer who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the department shall immediately cancel the same. In the event of the recovery of such stolen or converted vehicle, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

Source: Laws 2005, LB 276, § 78; Laws 2012, LB801, § 48.

60-180 Violations; penalty.

(1) A person who operates in this state a vehicle for which a certificate of title is required without having such certificate in accordance with the Motor Vehicle Certificate of Title Act or upon which the certificate of title has been canceled is guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who acquires, purchases, holds, or displays for sale a new vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title or any certificate of registration or license plates or tags upon cancellation of the same by the department and notice thereof as prescribed in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county treasurer or department as provided in section 60-169 in case of the destruction or dismantling or change of a vehicle in such respect that it is not the vehicle described in the certificate of title is guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer a vehicle without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a certificate of title or manufacturer's or importer's certificate is guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 60-179, a person who violates any of the other provisions of the Motor Vehicle Certificate of Title Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 80; Laws 2012, LB751, § 11; Laws 2012, LB801, § 49.

60-181 Vehicle identification inspections; training expenses; how paid.

The Nebraska State Patrol Cash Fund shall be used to defray the expenses of training personnel in title document examination, vehicle identification, and fraud and theft investigation and to defray the patrol's expenses arising pursuant to sections 60-181 to 60-189, including those incurred for printing and distribution of forms, personal services, hearings, and similar administrative functions. Personnel may include, but shall not be limited to, county treasurers, investigative personnel of the Nebraska Motor Vehicle Industry Licensing Board, and peace officers as defined in section 60-646. The training program shall be administered by the patrol. The patrol may utilize the Nebraska Law Enforcement Training Center to accomplish the training requirements of sections 60-181 to 60-189. The superintendent may make expenditures from the fund necessary to implement such training.

Source: Laws 2005, LB 276, § 81; Laws 2012, LB801, § 50.

60-184 Vehicle identification inspections; application for training; contents.

The sheriff may designate an employee of his or her office, any individual who is a peace officer as defined in section 60-646, or, by agreement, a county treasurer to assist in accomplishing inspections. Upon designation, the person

shall request approval for training from the superintendent. Any person requesting approval for training shall submit a written application to the patrol. Such application shall include the following information: (1) The name and address of the applicant; (2) the name and address of the agency employing the applicant and the name of the agency head; and (3) such biographical information as the superintendent may require to facilitate the designation authorized by this section.

Source: Laws 2005, LB 276, § 84; Laws 2012, LB801, § 51.

60-189 Vehicle identification inspections; superintendent; duty.

The superintendent shall, from time to time, provide each county treasurer and each sheriff with a list of persons holding then current certificates of training.

Source: Laws 2005, LB 276, § 89; Laws 2012, LB801, § 52.

ARTICLE 3

MOTOR VEHICLE REGISTRATION

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MOTOR VEHICLES

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60-301 Act, how cited.

Sections 60-301 to 60-3,222 shall be known and may be cited as the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5; Laws 2009, LB110, § 1; Laws 2009, LB129, § 1; Laws 2010, LB650, § 20; Laws 2011, LB163, § 16; Laws 2011, LB289, § 12; Laws 2012, LB216, § 1; Laws 2012, LB1155, § 7; Laws 2014, LB383, § 1; Laws 2014, LB816, § 1. Effective date July 18, 2014.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB383, section 1, with LB816, section 1, to reflect all amendments.

60-302 Definitions, where found.

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-302.01 to 60-360 shall be used.

Source: Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6; Laws 2010, LB650, § 21; Laws 2011, LB163, § 17; Laws 2012, LB1155, § 8.

60-302.01 Access aisle, defined.

Access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2011.

Source: Laws 2011, LB163, § 18.

60-305 All-terrain vehicle, defined.

All-terrain vehicle means any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of twelve hundred pounds or less, (3) travels on three or more nonhighway tires, and (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger. All-terrain vehicles which have been modified or retrofitted with after-market parts to include additional equipment

not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

Source: Laws 2005, LB 274, § 5; Laws 2014, LB814, § 5.
Operative date October 1, 2014.

60-306 Alternative fuel, defined.

Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel laws as defined in section 66-712 which is used to power a motor vehicle. Alternative fuel does not include motor vehicle fuel as defined in section 66-482, diesel fuel as defined in section 66-482, or compressed fuel as defined in section 66-6,100.

Source: Laws 2005, LB 274, § 6; Laws 2011, LB289, § 13.

60-310 Automobile liability policy, defined.

Automobile liability policy means liability insurance written by an insurance carrier duly authorized to do business in this state protecting other persons from damages for liability on account of accidents occurring subsequent to the effective date of the insurance arising out of the ownership of a motor vehicle (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of other persons in any one accident. An automobile liability policy shall not exclude, limit, reduce, or otherwise alter liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured.

Source: Laws 2005, LB 274, § 10; Laws 2013, LB316, § 1.

60-320 Repealed. Laws 2012, LB 801, § 102.

60-323 Evidence of insurance, defined.

Evidence of insurance means evidence of a current and effective automobile liability policy in paper or electronic format.

Source: Laws 2005, LB 274, § 23; Laws 2014, LB816, § 2.
Effective date July 18, 2014.

60-329.01 Golf car vehicle, defined.

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes.

Source: Laws 2012, LB1155, § 9.

60-331.01 Handicapped or disabled parking permit, defined.

Handicapped or disabled parking permit means a permit issued by the department that authorizes the use of parking spaces and access aisles that have been designated for the exclusive use of handicapped or disabled persons.

Source: Laws 2011, LB163, § 19; Laws 2014, LB657, § 3.
Effective date July 18, 2014.

60-331.02 Handicapped or disabled person, defined.

Handicapped or disabled person means any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than two hundred feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has permanently lost all or substantially all the use of one or more limbs.

Source: Laws 2011, LB163, § 20.

60-336.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2014.

Source: Laws 2007, LB286, § 26; Laws 2011, LB289, § 14; Laws 2014, LB776, § 1.
Effective date March 29, 2014.

60-337.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 22; Laws 2012, LB898, § 2.

60-339 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for

and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snow-mobles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, and (9) electric personal assistive mobility devices.

Source: Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23; Laws 2011, LB289, § 15; Laws 2012, LB1155, § 10.

60-344 Parts vehicle, defined.

Parts vehicle means a vehicle or trailer the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

Source: Laws 2005, LB 274, § 44; Laws 2011, LB241, § 5.

60-352.01 Temporarily handicapped or disabled person, defined.

Temporarily handicapped or disabled person means any handicapped or disabled person whose personal mobility is expected to be limited as described in section 60-331.02 for no longer than one year.

Source: Laws 2011, LB163, § 21.

60-358.01 Utility-type vehicle, defined.

(1) Utility-type vehicle means any motorized off-highway vehicle which (a) is seventy-four inches in width or less, (b) is not more than one hundred eighty inches, including the bumper, in length, (c) has a dry weight of two thousand pounds or less, and (d) travels on four or more nonhighway tires. Utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

(2) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

Source: Laws 2010, LB650, § 24; Laws 2012, LB1155, § 11; Laws 2013, LB223, § 2; Laws 2014, LB814, § 6.
Operative date October 1, 2014.

60-363 Registration certificate; duty to carry, exception.

(1) No person shall operate or park a motor vehicle on the highways unless such motor vehicle at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it.

(2) No person shall tow or park a trailer on the highways unless the registration certificate issued for the trailer or a copy thereof is carried in or upon the trailer or in or upon the motor vehicle that is towing or parking the trailer, subject to inspection by any peace officer, except fertilizer trailers as defined in section 60-326. The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner of the fertilizer trailer.

(3) In the case of a motorcycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.

Source: Laws 2005, LB 274, § 63; Laws 2010, LB725, § 1; Laws 2014, LB758, § 1.
Effective date July 18, 2014.

60-365 Operation of vehicle without registration; limitation; proof of ownership.

Any person purchasing a motor vehicle or trailer in this state other than from a licensed dealer in motor vehicles or trailers shall not operate or tow such motor vehicle or trailer in this state without registration except as provided in this section. Such purchaser may operate or tow such motor vehicle or trailer without registration for a period not to exceed thirty days. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a bill of sale showing the date of transfer or the certificate of title to such motor vehicle or trailer with assignment thereof duly executed. When such motor vehicle or trailer is purchased from a nonresident, the person in charge of such motor vehicle or trailer shall present upon demand proper evidence of ownership from the state where such motor vehicle or trailer was purchased.

Source: Laws 2005, LB 274, § 65; Laws 2008, LB756, § 11; Laws 2012, LB751, § 12.

60-366 Nonresident owner; registration; when; reciprocity; avoidance of proper registration; Department of Motor Vehicles or Department of Revenue; powers; notice; determination; appeal; penalty; when.

(1) Any nonresident owner who desires to register a motor vehicle or trailer in this state shall register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

(2) A nonresident owner, except as provided in subsections (3) and (4) of this section, owning any motor vehicle or trailer which has been properly registered in the state, country, or other place of which the owner is a resident, and which at all times, when operated or towed in this state, has displayed upon it the license plate or plates issued for such motor vehicle or trailer in the place of residence of such owner, may operate or permit the operation or tow or permit the towing of such motor vehicle or trailer within the state without registering such motor vehicle or trailer or paying any fees to this state.

(3) Any nonresident owner gainfully employed or present in this state, operating a motor vehicle or towing a trailer in this state, shall register such

motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state. Any nonresident owner who operates a motor vehicle or tows a trailer in this state for thirty or more continuous days shall register such motor vehicle or trailer in the same manner as a Nebraska resident unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

(4)(a) The Department of Motor Vehicles or the Department of Revenue may determine (i) that a limited liability company, partnership, corporation, or other business entity that is organized under the laws of another state or country and that owns or holds title to a recreational vehicle is a shell company used to avoid proper registration of the recreational vehicle in this state and (ii) that the recreational vehicle is controlled by a Nebraska resident.

(b) Factors that the Department of Motor Vehicles or the Department of Revenue may consider to determine that the limited liability company, partnership, corporation, or other business entity is a shell company used to avoid proper registration of the recreational vehicle in this state include, but are not limited to:

(i) The limited liability company, partnership, corporation, or other business entity lacks a business activity or purpose;

(ii) The limited liability company, partnership, corporation, or other business entity does not maintain a physical location in this state;

(iii) The limited liability company, partnership, corporation, or other business entity does not employ individual persons and provide those persons with Internal Revenue Service Form W-2 wage and tax statements; or

(iv) The limited liability company, partnership, corporation, or other business entity fails to file federal tax returns or fails to file a state tax return in this state.

(c) Factors that the Department of Motor Vehicles or the Department of Revenue may consider to determine that the recreational vehicle is controlled by a Nebraska resident include, but are not limited to:

(i) A Nebraska resident was the initial purchaser of the recreational vehicle;

(ii) A Nebraska resident operated or stored the recreational vehicle in this state for any period of time;

(iii) A Nebraska resident is a member, partner, or shareholder or is otherwise affiliated with the limited liability company, partnership, corporation, or other business entity purported to own the recreational vehicle; or

(iv) A Nebraska resident is insured to operate the recreational vehicle.

(d) If the Department of Motor Vehicles or the Department of Revenue makes the determinations described in subdivision (4)(a) of this section, there is a rebuttable presumption that:

(i) The Nebraska resident in control of the recreational vehicle is the actual owner of the recreational vehicle;

(ii) Such Nebraska resident is required to register the recreational vehicle in this state and is liable for all motor vehicle taxes, motor vehicle fees, and registration fees as provided in the Motor Vehicle Registration Act; and

(iii) The purchase of the recreational vehicle is subject to sales or use tax under section 77-2703.

(e) The Department of Motor Vehicles or the Department of Revenue shall notify the Nebraska resident who is presumed to be the owner of the recreational vehicle that he or she is required to register the recreational vehicle in this state, pay any applicable taxes and fees for proper registration of the recreational vehicle under the Motor Vehicle Registration Act, and pay any applicable sales or use tax due on the purchase under the Nebraska Revenue Act of 1967 no later than thirty days after the date of the notice.

(f)(i) For a determination made by the Department of Motor Vehicles under this subsection, the Nebraska resident who is presumed to be the owner of the recreational vehicle may accept the determination and pay the county treasurer as shown in the notice, or he or she may dispute the determination and appeal the matter. Such appeal shall be filed with the Director of Motor Vehicles within thirty days after the date of the notice or the determination will be final. The director shall appoint a hearing officer who shall hear the appeal and issue a written decision. Such appeal shall be in accordance with the Administrative Procedure Act. Following a final determination in the appeal in favor of the Department of Motor Vehicles or if no further appeal is filed, the Nebraska resident shall owe the taxes and fees determined to be due, together with any costs for the appeal assessed against the owner.

(ii) For a determination made by the Department of Revenue under this subsection, the Nebraska resident who is presumed to be the owner of the recreational vehicle may appeal the determination made by the Department of Revenue, and such appeal shall be in accordance with section 77-2709.

(g) If the Nebraska resident who is presumed to be the owner of the recreational vehicle fails to pay the motor vehicle taxes, motor vehicle fees, registration fees, or sales or use tax required to be paid under this subsection, he or she shall be assessed a penalty of fifty percent of such unpaid taxes and fees. Such penalty shall be remitted by the county treasurer or the Department of Revenue to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2005, LB 274, § 66; Laws 2014, LB851, § 4.
Operative date October 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

Nebraska Revenue Act of 1967, see section 77-2701.

60-367 Nonresident; applicability of act.

Except as otherwise provided in section 60-366, the provisions of the Motor Vehicle Registration Act relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident of this state, other than a foreign corporation doing business in this state, if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of motor vehicles or trailers and the display of registration numbers thereon and conspicuously displays his or her registration numbers as required thereby.

Source: Laws 2005, LB 274, § 67; Laws 2014, LB851, § 5.
Operative date October 1, 2014.

60-371 Exemption from civil liability.

The county and the county treasurer and his or her employees or agents shall be exempt from all civil liability when carrying out powers and duties delegated under the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 71; Laws 2012, LB801, § 53.

60-372 Vehicle titling and registration computer system; agent of county treasurer; appointment.

(1) Each county shall issue and file registration certificates using the vehicle titling and registration computer system prescribed by the department.

(2) The county treasurer may appoint an agent to issue registration certificates and to accept the payment of taxes and fees as provided in the Motor Vehicle Registration Act, upon approval of the county board. The agent shall furnish a bond in such amount and upon such conditions as determined by the county board.

Source: Laws 2005, LB 274, § 72; Laws 2012, LB801, § 54.

60-382 Nonresident owners; thirty-day license plate; application; fee; certificate; contents.

(1) Any person, not a resident of this state, who is the owner of a motor vehicle or trailer required to be registered in this state or any other state may, for the sole purpose of delivering, or having delivered, such motor vehicle or trailer, to his or her home or place of business in another state, apply for and obtain a thirty-day license plate which shall allow such person or his or her agent or employee to operate such motor vehicle or trailer upon the highways under conditions set forth in subsection (2) of this section, without obtaining a certificate of title to such motor vehicle in this state.

(2) Applications for such thirty-day license plate shall be made to the county treasurer of the county where such motor vehicle or trailer was purchased or acquired. Upon receipt of such application and payment of the fee of five dollars, the county treasurer shall issue to such applicant a thirty-day license plate, which shall be devised by the director, and evidenced by the official certificate of the county treasurer, which certificate shall state the name of the owner and operator of the motor vehicle or trailer so licensed, the description of such motor vehicle or trailer, the place in Nebraska where such motor vehicle or trailer was purchased or otherwise acquired, the place where delivery is to be made, and the time, not to exceed thirty days from date of purchase or acquisition of the motor vehicle or trailer, during which time such license plate shall be valid.

(3) Nonresident owner thirty-day license plates issued under this section shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

Source: Laws 2005, LB 274, § 82; Laws 2012, LB801, § 55.

60-383.02 Low-speed vehicle; registration; fee.

For the registration of every low-speed vehicle, the fee shall be fifteen dollars.

Source: Laws 2011, LB289, § 16.

60-384 Nonresident carnival operator; thirty-day permit; fees; reciprocity.

Upon receipt of an application duly verified, a nonresident carnival operator shall be issued a thirty-day carnival operators' permit to operate in Nebraska upon the payment of the following fees: For the gross vehicle weight of sixteen thousand pounds or less, ten dollars; for more than sixteen thousand pounds and not more than twenty-eight thousand pounds, fifteen dollars; for more than twenty-eight thousand pounds and not more than forty thousand pounds, twenty dollars; and for more than forty thousand pounds and not more than seventy-three thousand two hundred eighty pounds, twenty-five dollars, except that such a permit shall be issued only to out-of-state operators when the jurisdiction in which the motor vehicle and trailer is registered grants reciprocity to Nebraska. Such fees shall be paid to the county treasurer or persons designated by the director, who shall have authority to issue the permit when the applicant is eligible and pays the required fee. All fees collected under this section shall be paid into the state treasury and by the State Treasurer credited to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 84; Laws 2012, LB801, § 56.

60-385 Application; situs.

Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

Source: Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33; Laws 2012, LB801, § 57.

60-386 Application; contents.

Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The application shall also contain a notification that bulk fuel purchasers may be subject to federal excise tax liability. The department shall include such notification in the notices required by section 60-3,186.

Source: Laws 2005, LB 274, § 86; Laws 2011, LB289, § 17; Laws 2012, LB801, § 58; Laws 2013, LB207, § 1.

60-387.01 Evidence of insurance; display as electronic image.

Evidence of insurance may be displayed as an electronic image on an electronic device. If a person displays evidence of insurance on an electronic device, the person is not consenting for law enforcement to access other contents of the device. Whenever a person presents an electronic device for

purposes of evidence of insurance, the person presenting the electronic device assumes liability for any damage to the device.

Source: Laws 2014, LB816, § 3.
Effective date July 18, 2014.

60-388 Collection of taxes and fees required.

No county treasurer shall receive or accept an application or registration fee or issue any registration certificate for any motor vehicle or trailer without collection of the taxes and the fees imposed in sections 60-3,185, 60-3,190, and 77-2703 and any other applicable taxes and fees upon such motor vehicle or trailer. If applicable, the applicant shall furnish proof of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by the Internal Revenue Code, 26 U.S.C. 4481.

Source: Laws 2005, LB 274, § 88; Laws 2012, LB801, § 59.

60-391 Combined certificate and receipt for fees; county treasurer; report; contents.

The county treasurer shall issue a combined certificate and receipt for all fees received for the registration of motor vehicles or trailers to the applicant for registration and forward an electronic copy of the combined application and receipt to the department in a form prescribed by the department. Each county treasurer shall make a report to the department of the number of original registrations of motor vehicles or trailers registered in the rural areas of the county and of the number of original registrations of motor vehicles or trailers registered in each incorporated city and village in the county during each month, on or before the twenty-fifth day of the succeeding month. The department shall prescribe the form of such report. When any county treasurer fails to file such report, the department shall notify the county board of such county and the Director of Administrative Services who shall immediately suspend any payments to such county for highway purposes until the required reports are submitted.

Source: Laws 2005, LB 274, § 91; Laws 2012, LB801, § 60.

60-393 Multiple vehicle registration.

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, 60-3,122.04, and 60-3,128. Thereafter all such motor vehicles or

trailers shall be registered on an annual basis starting in the month chosen by the owner.

Source: Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4; Laws 2011, LB289, § 18; Laws 2014, LB383, § 2.
Effective date July 18, 2014.

60-395 Refund or credit of fees; when authorized.

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, 60-3,122.04, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

- (a) Upon transfer of ownership of any motor vehicle or trailer;
- (b) In case of loss of possession because of fire, theft, dismantlement, or junking;
- (c) When a salvage branded certificate of title is issued;
- (d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191;
- (e) Upon a trade-in or surrender of a motor vehicle under a lease; or
- (f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a

legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) If a motor vehicle or trailer was reported stolen under section 60-178, a refund under this section shall not be reduced for a lost plate charge and a credit under this section may be reduced for a lost plate charge but the applicant shall not be required to pay the plate fee for new plates.

(8) The county treasurer shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

Source: Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5; Laws 2009, LB175, § 1; Laws 2011, LB289, § 19; Laws 2012, LB801, § 61; Laws 2014, LB383, § 3.
Effective date July 18, 2014.

60-396 Credit of fees; vehicle disabled or removed from service.

Whenever the registered owner files an application with the county treasurer showing that a motor vehicle or trailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, 60-3,122.04, and 60-3,128. The owner shall also receive a credit for the unused portion of the motor vehicle tax and fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer shall forward the application and affidavit, if any, to the State Treasurer who shall determine the amount, if any, of the allowable credit for the registration fee and issue a credit certificate to the owner. For the motor vehicle tax and fee, the county treasurer shall determine the amount, if any, of the allowable credit and issue a credit certificate to the owner. When such motor vehicle or trailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles or trailers incurred within one year after cancellation of registration of the motor vehicle or trailer for which the credits were allowed. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the

registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6; Laws 2012, LB801, § 62; Laws 2014, LB383, § 4.
Effective date July 18, 2014.

60-397 Refund or credit; salvage branded certificate of title.

If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes by (1) filing an application with the county treasurer within sixty days after the date of the settlement stating that title to the motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or validation decals, filing an affidavit with the county treasurer regarding the transfer of title due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36; Laws 2012, LB801, § 63.

60-398 Nonresident; refund; when allowed.

A nonresident may, if he or she applies within ninety days from his or her original registration date and surrenders the registration certificate and license plates which were assigned to him or her, receive from the county treasurer, or the department if registration was pursuant to section 60-3,198, a refund in the amount of fifty percent of the original license fee, fifty percent of the motor vehicle tax imposed in section 60-3,185, and fifty percent of the motor vehicle fee imposed in section 60-3,190, except that no refunds shall be made on any license surrendered after the ninth month of the registration period for which the motor vehicle or trailer was registered.

Source: Laws 2005, LB 274, § 98; Laws 2012, LB801, § 64.

60-3,100 License plates; issuance.

(1) The department shall issue to every person whose motor vehicle or trailer is registered fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. Two license plates shall be issued for every motor vehicle, except that one plate shall be issued for dealers, motorcycles, mini-trucks, truck-tractors, trailers, buses, apportionable vehicles, and special interest motor vehicles that use the special interest motor vehicle license plate authorized by and issued under section 60-3,135.01. The license plates shall be of a color designated by the director. The color of the plates shall be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Motorcycle, minitruck, low-speed vehicle, and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

Source: Laws 2005, LB 274, § 100; Laws 2010, LB650, § 25; Laws 2011, LB289, § 20; Laws 2012, LB216, § 2.

60-3,104 Types of license plates.

The department shall issue the following types of license plates:

- (1) Amateur radio station license plates issued pursuant to section 60-3,126;
- (2) Apportionable vehicle license plates issued pursuant to section 60-3,203;
- (3) Boat dealer license plates issued pursuant to section 60-379;
- (4) Bus license plates issued pursuant to section 60-3,144;
- (5) Commercial motor vehicle license plates issued pursuant to section 60-3,147;
- (6) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;
- (7) Disabled veteran license plates issued pursuant to section 60-3,124;
- (8) Farm trailer license plates issued pursuant to section 60-3,151;
- (9) Farm truck license plates issued pursuant to section 60-3,146;
- (10) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;
- (11) Fertilizer trailer license plates issued pursuant to section 60-3,151;
- (12) Film vehicle license plates issued pursuant to section 60-383;
- (13) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;
- (14) Handicapped or disabled person license plates issued pursuant to section 60-3,113;

- (15) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;
- (16) Local truck license plates issued pursuant to section 60-3,145;
- (17) Military Honor Plates issued pursuant to sections 60-3,122.03 and 60-3,122.04;
- (18) Minitruck license plates issued pursuant to section 60-3,100;
- (19) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;
- (20) Motor vehicles exempt pursuant to section 60-3,107;
- (21) Motorcycle license plates issued pursuant to section 60-3,100;
- (22) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;
- (23) Nonresident owner thirty-day license plates issued pursuant to section 60-382;
- (24) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143;
- (25) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143;
- (26) Pearl Harbor license plates issued pursuant to section 60-3,122;
- (27) Personal-use dealer license plates issued pursuant to section 60-3,116;
- (28) Personalized message license plates for motor vehicles and cabin trailers, except commercial motor vehicles registered for over ten tons gross weight, issued pursuant to sections 60-3,118 to 60-3,121;
- (29) Prisoner-of-war license plates issued pursuant to section 60-3,123;
- (30) Purple Heart license plates issued pursuant to section 60-3,125;
- (31) Recreational vehicle license plates issued pursuant to section 60-3,151;
- (32) Repossession license plates issued pursuant to section 60-375;
- (33) Special interest motor vehicle license plates issued pursuant to section 60-3,135.01;
- (34) Specialty license plates issued pursuant to sections 60-3,104.01 and 60-3,104.02;
- (35) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;
- (36) Trailer license plates issued pursuant to section 60-3,100;
- (37) Trailers exempt pursuant to section 60-3,108;
- (38) Transporter license plates issued pursuant to section 60-378;
- (39) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;
- (40) Utility trailer license plates issued pursuant to section 60-3,151; and

(41) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109.

Source: Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7; Laws 2009, LB110, § 2; Laws 2010, LB650, § 26; Laws 2012, LB216, § 3; Laws 2014, LB383, § 5.

Effective date July 18, 2014.

60-3,104.01 Specialty license plates; application; fee; delivery; transfer; credit allowed; fee.

(1) A person may apply for specialty license plates in lieu of regular license plates on an application prescribed and provided by the department pursuant to section 60-3,104.02 for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a specialty license plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications. Each application for initial issuance or renewal of specialty license plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit fifteen percent of the fee for initial issuance and renewal of specialty license plates to the Department of Motor Vehicles Cash Fund and eighty-five percent of the fee to the Highway Trust Fund.

(2) When the department receives an application for specialty license plates, it shall deliver the plates to the county treasurer of the county in which the motor vehicle, trailer, semitrailer, or cabin trailer is registered. The county treasurer shall issue specialty license plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle, trailer, semitrailer, or cabin trailer. If specialty license plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle, trailer, semitrailer, or cabin trailer bearing specialty license plates may make application to the county treasurer to have such specialty license plates transferred to a motor vehicle, trailer, semitrailer, or cabin trailer other than the motor vehicle, trailer, semitrailer, or cabin trailer for which such plates were originally purchased if such motor vehicle, trailer, semitrailer, or cabin trailer is owned by the owner of the specialty license plates.

(b) The owner may have the unused portion of the specialty license plate fee credited to the other motor vehicle, trailer, semitrailer, or cabin trailer which will bear the specialty license plates at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2009, LB110, § 3; Laws 2012, LB801, § 65.

60-3,109 Well-boring apparatus and well-servicing equipment license plates.

(1) Any owner of well-boring apparatus and well-servicing equipment may make application to the county treasurer for license plates.

(2) Well-boring apparatus and well-servicing equipment license plates shall display thereon, in addition to the license number, the words special equipment.

Source: Laws 2005, LB 274, § 109; Laws 2012, LB801, § 66.

60-3,111 Farmers and ranchers; special permits; fee.

Special permits may be supplied by the department and issued by the county treasurer for truck-tractor and semitrailer combinations of farmers or ranchers used wholly and exclusively to carry their own supplies, farm equipment, and household goods to or from the owner's farm or ranch or used by the farmer or rancher to carry his or her own agricultural products to or from storage or market. Such special permits shall be valid for periods of thirty days and shall be carried in the cab of the truck-tractor. The fee for such permit shall be equivalent to one-twelfth of the regular commercial registration fee as determined by gross vehicle weight and size limitations as defined in sections 60-6,288 to 60-6,294, but the fee shall be no less than twenty-five dollars. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

Source: Laws 2005, LB 274, § 111; Laws 2012, LB801, § 67.

60-3,112 Nonresident licensed vehicle hauling grain or seasonally harvested products; permit; fee.

If a truck, truck-tractor, or trailer is lawfully licensed under the laws of another state or province and is engaged in hauling grain or other seasonally harvested products from the field where they are harvested to storage or market during the period from June 1 to December 15 of each year or under emergency conditions, the right to operate over the highways of this state for a period of ninety days shall be authorized by obtaining a permit therefor from the county treasurer or his or her agent of the county in which grain is first hauled. Such permit shall be issued electronically upon the payment of a fee of twenty dollars for a truck or one hundred fifty dollars for any combination of truck, truck-tractor, or trailer. The fees for such permits, when collected, shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 112; Laws 2012, LB801, § 68.

60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,102, 60-3,185, 60-3,190, and 60-3,191, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

An application and proof of disability in the form and with the information required by section 60-3,113.02 shall be submitted before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates pursuant to this section and all persons who obtain a handicapped or disabled parking permit.

Source: Laws 2005, LB 274, § 113; Laws 2011, LB163, § 22; Laws 2011, LB289, § 21; Laws 2014, LB657, § 4.
Effective date July 18, 2014.

60-3,113.01 Handicapped or disabled person; parking permits; electronic system; department; duties.

The department shall develop, implement, and maintain an electronic system for accepting and processing applications for handicapped or disabled parking permits.

Source: Laws 2011, LB163, § 23; Laws 2014, LB657, § 5.
Effective date July 18, 2014.

60-3,113.02 Handicapped or disabled person; parking permit; issuance; procedure; renewal; notice; identification card.

(1) A handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, foster parent, or certifying health care provider may apply for a handicapped or disabled parking permit to the department or through a health care provider using a secure online process developed by the department which will entitle the holder of a permit or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, (a) the handicapped or disabled person or temporarily handicapped or disabled person is considered the holder of the permit and (b) certifying health care provider means the physician, physician assistant, or advanced practice registered nurse who makes the certification required in subsection (2) of this section or his or her designee.

(2) The application process for a handicapped or disabled parking permit or for the renewal of a permit under this section shall include presentation of proof of identity by the handicapped or disabled person or temporarily handicapped or disabled person and certification by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her certification act that the person who will be the holder meets the statutory criteria for qualification. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit. No applicant shall be required to provide his or her social security number. In the case of a temporarily handicapped or

disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall recommend that the permit for the temporarily handicapped or disabled person be issued for either a three-month period or a six-month period, with such recommendation to be based on the estimated date of recovery.

(3) The department, upon receipt of a completed application for a handicapped or disabled parking permit under this section, shall verify that the applicant qualifies for such permit and, if so, shall deliver the permit to the applicant. In issuing renewed permits, the department shall deliver each individual renewed permit to the applicant. The renewed permit shall not be issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. A person may hold up to two permits under this section. If a person holds a permit under this section, such person may not hold a permit under section 60-3,113.03.

(4) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall show the expiration date of the permit and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

Source: Laws 2011, LB163, § 24; Laws 2013, LB31, § 1; Laws 2014, LB657, § 6.

Effective date July 18, 2014.

60-3,113.03 Handicapped or disabled person; parking permit; permit for specific motor vehicle; application; issuance; procedure; renewal; notice; identification card.

(1) The department shall take an application from any person for a handicapped or disabled parking permit that is issued for a specific motor vehicle and entitles the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces or access aisles.

(2) A person applying for a handicapped or disabled parking permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons

or temporarily handicapped or disabled persons and shall include such information as is required by the department, including a demonstration to the department that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit.

(3) The department, upon receipt of a completed application, shall verify that the applicant qualifies for a handicapped or disabled parking permit under this section and, if so, shall deliver the permit to the applicant. In issuing renewed permits, the department shall deliver each individual renewed permit to the applicant. The renewed permit shall not be issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. No more than one such permit shall be issued for each motor vehicle under this section.

(4) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card to the registered owner of the motor vehicle or the applicant. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall identify the motor vehicle for which the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

Source: Laws 2011, LB163, § 25; Laws 2014, LB657, § 7.

Effective date July 18, 2014.

60-3,113.04 Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.

(1) A handicapped or disabled parking permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in 23 C.F.R. part 1235, UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES, as such regulations existed on January 1, 2014.

(2) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 60-3,113.02, 60-3,113.03, and 60-3,113.05.

(3) A duplicate handicapped or disabled parking permit may be provided up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 60-3,113.02 or 60-3,113.03, whichever is applicable, except that a new certification by a physician, a physician assistant, or an advanced practice registered nurse need not be provided. A duplicate permit shall be valid for the remainder of the

period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 60-3,113.02 or 60-3,113.03, whichever is applicable.

Source: Laws 2011, LB163, § 26; Laws 2012, LB751, § 13; Laws 2013, LB35, § 1; Laws 2014, LB657, § 8; Laws 2014, LB776, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB657, section 8, with LB776, section 2, to reflect all amendments.

Note: Changes made by LB776 became effective March 29, 2014. Changes made by LB657 became effective July 18, 2014.

60-3,113.05 Handicapped or disabled persons; parking permit; expiration date; permit for temporarily handicapped or disabled person; period valid; renewal.

(1) Permanently issued handicapped or disabled parking permits issued prior to October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the third year after issuance and shall expire on that day. Permanently issued handicapped or disabled parking permits issued on or after October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the sixth year after issuance and shall expire on that day.

(2) All handicapped or disabled parking permits for temporarily handicapped or disabled persons shall be issued for a period ending either three months after the date of issuance or six months after the date of issuance, with such period to be based on the estimated date of recovery, but such permit may be renewed one time for a similar three-month or six-month period. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

Source: Laws 2011, LB163, § 27; Laws 2013, LB31, § 2; Laws 2014, LB657, § 9.

Effective date July 18, 2014.

60-3,113.06 Handicapped or disabled persons; parking permit; use; display; prohibited acts; violation; penalty.

A handicapped or disabled parking permit shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which the permit is issued. A handicapped or disabled parking permit shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. A handicapped or disabled parking permit shall be displayed on the dashboard only when there is no rearview mirror. No person shall alter or reproduce in any manner a handicapped or disabled parking permit. No person shall knowingly hold more than the allowed number of handicapped or disabled parking permits. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.02 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the holder of the permit will enter or exit the motor vehicle while it is parked in a designated space or access aisle. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.03 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the person displaying the permit is driving the motor vehicle for which the permit was issued and a handicapped or disabled

person will enter or exit the motor vehicle while it is parked in a designated space or access aisle. Any violation of this section shall constitute a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07.

Source: Laws 2011, LB163, § 28; Laws 2014, LB657, § 10.
Effective date July 18, 2014.

60-3,113.07 Handicapped or disabled persons; parking permit; prohibited acts; violation; penalty; powers of director.

(1) No person shall knowingly provide false information on an application for a handicapped or disabled parking permit. Any person who violates this subsection shall be guilty of a Class III misdemeanor.

(2) If the director discovers evidence of fraud in an application for a handicapped or disabled parking permit or a license plate issued under section 60-3,113, the director may summarily cancel such permit or license plate and send notice of cancellation to the applicant.

Source: Laws 2011, LB163, § 29; Laws 2014, LB657, § 11.
Effective date July 18, 2014.

60-3,113.08 Handicapped or disabled persons; parking permit; rules and regulations.

The department may adopt and promulgate rules and regulations necessary to fulfill any duties and obligations as provided in sections 60-3,113.01 to 60-3,113.08. All rules and regulations of the department relating to the issuance and use of handicapped or disabled parking permits adopted and promulgated prior to July 18, 2014, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 2011, LB163, § 30; Laws 2014, LB657, § 12.
Effective date July 18, 2014.

60-3,114 Dealer or manufacturer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of a fee of thirty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer of the county in which his or her place of business is located for a certificate and one dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. One additional dealer license plate may be procured for the type of motor vehicle or trailer the dealer has sold during the last previous period of October 1 through September 30 for each twenty motor vehicles or trailers sold at retail during such period or one additional dealer license plate for each thirty motor vehicles or trailers sold at wholesale during such period, but not to exceed a total of five additional dealer license plates in the case of motor vehicles or trailers sold at wholesale, or, in the case of a manufacturer, for each ten motor vehicles or trailers actually manufactured or assembled within the state within the last previous period of October 1 through September 30 for a fee of fifteen dollars each.

(2) Dealer or manufacturer license plates shall display, in addition to the registration number, the letters DLR.

Source: Laws 2005, LB 274, § 114; Laws 2012, LB801, § 69.

60-3,115 Additional dealer license plates; unauthorized use; hearing.

When an applicant applies for a license, the Nebraska Motor Vehicle Industry Licensing Board may authorize the county treasurer to issue additional dealer license plates when the dealer or manufacturer furnishes satisfactory proof for a need of additional dealer license plates because of special condition or hardship. In the case of unauthorized use of dealer license plates by any licensed dealer, the Nebraska Motor Vehicle Industry Licensing Board may hold a hearing and after such hearing may determine that such dealer is not qualified for continued usage of such dealer license plates for a set period not to exceed one year.

Source: Laws 2005, LB 274, § 115; Laws 2012, LB801, § 70.

60-3,116 Personal-use dealer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of an annual fee of two hundred fifty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer of the county in which his or her place of business is located for a certificate and one personal-use dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. Additional personal-use dealer license plates may be procured upon payment of an annual fee of two hundred fifty dollars each, subject to the same limitations as provided in section 60-3,114 as to the number of additional dealer license plates. A personal-use dealer license plate may be displayed on a motor vehicle having a gross weight including any load of six thousand pounds or less belonging to the dealer, may be used in the same manner as a dealer license plate, and may be used for personal or private use of the dealer, the dealer's immediate family, or any bona fide employee of the dealer licensed pursuant to the Motor Vehicle Industry Regulation Act.

(2) Personal-use dealer license plates shall have the same design and shall be displayed as provided in sections 60-370 and 60-3,100.

Source: Laws 2005, LB 274, § 116; Laws 2010, LB816, § 11; Laws 2012, LB801, § 71.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-3,119 Personalized message license plates; application; renewal; fee.

(1) Application for personalized message license plates shall be made to the department. The department shall make available through each county treasurer forms to be used for such applications.

(2) Each initial application shall be accompanied by a fee of forty dollars. The fees shall be remitted to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of forty dollars. County treasurers

collecting fees pursuant to this subsection shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 119; Laws 2009, LB110, § 5; Laws 2012, LB801, § 72.

60-3,120 Personalized message license plates; delivery.

When the department approves an application for personalized message license plates, it shall notify the applicant and deliver the license plates to the county treasurer of the county in which the motor vehicle or cabin trailer is to be registered. The county treasurer shall deliver such plates to the applicant, in lieu of regular license plates, when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer.

Source: Laws 2005, LB 274, § 120; Laws 2012, LB801, § 73.

60-3,121 Personalized message license plates; transfer; credit allowed; fee.

(1) The owner of a motor vehicle or cabin trailer bearing personalized message license plates may make application to the county treasurer to have such license plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such license plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the license plates.

(2) The owner may have the unused portion of the message plate fee credited to the other motor vehicle or cabin trailer which will bear the license plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(3) Application for such transfer shall be accompanied by a fee of three dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 121; Laws 2012, LB801, § 74.

60-3,122.02 Gold Star Family plates; fee.

(1) A person may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and furnishing proof satisfactory to the department that the applicant is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States.

(2)(a) Each application for initial issuance of consecutively numbered Gold Star Family plates shall be accompanied by a fee of five dollars. An application

for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee for initial issuance and renewal of such plates to the Nebraska Veteran Cemetery System Operation Fund.

(b) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the department receives an application for Gold Star Family plates, the department shall deliver the plates to the county treasurer of the county in which the motor vehicle or cabin trailer is registered. The county treasurer shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(4) The owner of a motor vehicle or cabin trailer bearing Gold Star Family plates may apply to the county treasurer to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

Source: Laws 2007, LB570, § 3; Laws 2009, LB110, § 7; Laws 2009, LB331, § 2; Laws 2012, LB801, § 75.

60-3,122.03 Military Honor Plates.

(1) The department shall design license plates to be known as Military Honor Plates. The department shall create designs honoring persons who have served or are serving in the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, or National Guard. There shall be six designs, one for each of such armed forces reflecting its official emblem, official seal, or other official image. The issuance of plates for each of such armed forces shall be conditioned on the approval of the

armed forces owning the copyright to the official emblem, official seal, or other official image. A person may qualify for a Military Honor Plate by registering with the Department of Veterans' Affairs pursuant to section 80-414. The Department of Motor Vehicles shall verify the applicant's eligibility for a plate created pursuant to this section by consulting the registry established by the Department of Veterans' Affairs.

(2) The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The Department of Motor Vehicles shall make applications available for each type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.04.

(3) One type of Military Honor Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(4) One type of Military Honor Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

Source: Laws 2014, LB383, § 9.

Effective date July 18, 2014.

60-3,122.04 Military Honor Plates; fee; eligibility; transfer.

(1) Beginning January 2, 2016, an eligible person may apply to the department for Military Honor Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Military Honor Plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and verification by the department of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. To be eligible an applicant shall be (a) active duty armed forces personnel serving in any of the armed forces listed in subsection (1) of section 60-3,122.03 or (b) a veteran of any of such armed forces who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions). Any person using Military Honor Plates shall surrender the plates to the county treasurer if such person is no longer eligible for the plates. Regular plates shall be issued to any such person upon surrender of the Military Honor Plates for a three-dollar transfer fee and forfeiture of any of the remaining annual fee. The three-dollar transfer fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Military Honor Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall

remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Military Honor Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the Department of Motor Vehicles receives an application for Military Honor Plates, the department shall deliver the plates to the county treasurer of the county in which the motor vehicle or cabin trailer is registered. The county treasurer shall issue Military Honor Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Military Honor Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The owner of a motor vehicle or cabin trailer bearing Military Honor Plates may apply to the county treasurer to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Military Honor Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Military Honor Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

(6) If the director discovers evidence of fraud in an application for Military Honor Plates or that the holder is no longer eligible to have Military Honor Plates, the director may summarily cancel the plates and registration and send notice of the cancellation to the holder of the license plates.

Source: Laws 2014, LB383, § 10.

Effective date July 18, 2014.

60-3,123 Prisoner of war plates; fee.

(1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) The license plates shall be issued upon the applicant paying the regular license fee and furnishing proof satisfactory to the department that the applicant was formerly a prisoner of war. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41; Laws 2009, LB110, § 8; Laws 2010, LB705, § 2; Laws 2014, LB383, § 6.
Effective date July 18, 2014.

60-3,125 Purple Heart plates; fee.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) The license plates shall be issued upon payment of the regular license fee and furnishing proof satisfactory to the department that the applicant was awarded the Purple Heart. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43; Laws 2009, LB110, § 10; Laws 2014, LB383, § 7.
Effective date July 18, 2014.

60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; transfer; credit allowed.

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit forty-three percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund. The State Treasurer shall credit fifty-seven percent of the fees to the Spirit Plate Proceeds

Fund until the fund has been credited five million dollars from such fees and thereafter to the Highway Trust Fund.

(2) When the department receives an application for spirit plates, it shall deliver the plates to the county treasurer of the county in which the motor vehicle or cabin trailer is registered. The county treasurer shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle or cabin trailer bearing spirit plates may make application to the county treasurer to have such spirit plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the spirit plates.

(b) The owner may have the unused portion of the spirit plate fee credited to the other motor vehicle or cabin trailer which will bear the spirit plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45; Laws 2009, LB110, § 11; Laws 2012, LB801, § 76.

60-3,130.04 Historical vehicle; model-year license plates; authorized.

(1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, handicapped or disabled person license

plates, specialty license plates, special interest motor vehicle license plates, or Military Honor Plates.

Source: Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46; Laws 2009, LB110, § 13; Laws 2013, LB32, § 1; Laws 2014, LB383, § 8.
Effective date July 18, 2014.

60-3,135.01 Special interest motor vehicle license plates; application; fee; special interest motor vehicle; restrictions on use; prohibited acts; penalty.

(1) The department shall either modify an existing plate design or design license plates to identify special interest motor vehicles, to be known as special interest motor vehicle license plates. The department, in designing such special interest motor vehicle license plates, shall include the words special interest and limit the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall choose the design of the plate. The department shall make applications available for this type of plate when it is designed.

(2) One type of special interest motor vehicle license plate shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to seven characters; and
- (b) Not use a county designation.

(3) One type of special interest motor vehicle license plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118.

(4) A person may apply to the department for a special interest motor vehicle license plate in lieu of regular license plates on an application prescribed and provided by the department for any special interest motor vehicle, except for a motor vehicle registered under section 60-3,198, motorcycle, or trailer. The department shall make forms available for such applications through the county treasurers.

(5) The form shall contain a description of the special interest motor vehicle owned and sought to be registered, including the make, body type, model, serial number, and year of manufacture.

(6)(a) In addition to all other fees required to register a motor vehicle, each application for initial issuance or renewal of a special interest motor vehicle license plate shall be accompanied by a special interest motor vehicle license plate fee of fifty dollars. Twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund, and twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(b) If a special interest motor vehicle license plate is lost, stolen, or mutilated, the owner shall be issued a replacement license plate pursuant to section 60-3,157.

(7) When the department receives an application for a special interest motor vehicle license plate, the department shall deliver the plate to the county treasurer of the county in which the special interest motor vehicle is registered. The county treasurer shall issue the special interest motor vehicle license plate in lieu of regular license plates when the applicant complies with the other

provisions of the Motor Vehicle Registration Act for registration of the special interest motor vehicle.

(8) If the cost of manufacturing special interest motor vehicle license plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Department of Motor Vehicles Cash Fund under this section shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of special interest motor vehicle license plates and the amount charged pursuant to section 60-3,102 with respect to such license plates and the remainder shall be credited to the Department of Motor Vehicles Cash Fund.

(9) The special interest motor vehicle license plate shall be affixed to the rear of the special interest motor vehicle.

(10) A special interest motor vehicle shall not be used for the same purposes and under the same conditions as other motor vehicles of the same type and shall not be used for business or occupation or regularly for transportation to and from work. A special interest motor vehicle may be driven on the public streets and roads only for occasional transportation, public displays, parades, and related pleasure or hobby activities.

(11) It shall be unlawful to own or operate a motor vehicle with special interest motor vehicle license plates in violation of this section. Upon conviction of a violation of any provision of this section, a person shall be guilty of a Class V misdemeanor.

(12) For purposes of this section, special interest motor vehicle means a motor vehicle of any age which is being collected, preserved, restored, or maintained by the owner as a leisure pursuit and not used for general transportation of persons or cargo.

Source: Laws 2012, LB216, § 4.

60-3,140 Registration fees; to whom payable.

All fees for the registration of motor vehicles or trailers, unless otherwise expressly provided, shall be paid to the county treasurer of the county in which the motor vehicle or trailer has situs. If registered pursuant to section 60-3,198, all fees shall be paid to the department.

Source: Laws 2005, LB 274, § 140; Laws 2012, LB801, § 77.

60-3,141 Agents of department; fees; collection.

(1) The various county treasurers shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers shall in addition to the taxes and registration fees collect one dollar and fifty cents for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and four dollars and fifty cents for each registration of a motor vehicle or trailer of a nonresident. The county treasurer shall credit such additional fees collected for the county to the county general fund.

(3) The county treasurers shall transmit all motor vehicle fees and registration fees collected to the State Treasurer on or before the twenty-fifth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except

as provided in section 60-3,156. Any county treasurer who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

(4) If a registrant requests delivery of license plates, registration certificates, or validation decals by mail, the county treasurer may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant.

Source: Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47; Laws 2012, LB801, § 78; Laws 2013, LB207, § 2.

60-3,142 Fees; retention by county.

The various county treasurers acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112 for credit to the county general fund.

Source: Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48; Laws 2012, LB801, § 79.

60-3,144 Buses; registration fees.

(1) For buses used exclusively to carry children to and from school, and other school activities, the registration fee shall be ten dollars.

(2) For buses equipped to carry more than ten persons for hire, the fee shall be based on the weight of such bus. To ascertain the weight, the unladen weight in pounds shall be used. There shall be added to such weight in pounds the number of persons such bus is equipped to carry times two hundred, the sum thereof being the weight of such bus for license purposes. The unladen weight shall be ascertained by scale weighing of the bus fully equipped and as used upon the highways under the supervision of a member of the Nebraska State Patrol or a carrier enforcement officer and certified by such patrol member or carrier enforcement officer to the department or county treasurer. The fee therefor shall be as follows:

(a) If such bus weighs thirty-two thousand pounds and less than thirty-four thousand pounds, it shall be licensed as a twelve-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(b) If such bus weighs thirty thousand pounds and less than thirty-two thousand pounds, it shall be licensed as an eleven-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(c) If such bus weighs twenty-eight thousand pounds and less than thirty thousand pounds, it shall be licensed as a ten-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(d) If such bus weighs twenty-two thousand pounds and less than twenty-eight thousand pounds, it shall be licensed as a nine-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(e) If such bus weighs sixteen thousand pounds and less than twenty-two thousand pounds, it shall be licensed as an eight-ton truck as provided in section 60-3,147 and pay the same fee as therein provided; and

(f) If such bus weighs less than sixteen thousand pounds, it shall be licensed as a five-ton truck as provided in section 60-3,147 and pay the same fee as therein provided, except that upon registration of buses equipped to carry ten passengers or more and engaged entirely in the transportation of passengers for hire within municipalities or in and within a radius of five miles thereof the fee shall be seventy-five dollars, and for buses equipped to carry more than ten passengers and not for hire the registration fee shall be thirty dollars.

(3) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

Source: Laws 2005, LB 274, § 144; Laws 2012, LB801, § 80.

60-3,147 Commercial motor vehicles; registration fees.

(1) The registration fee on commercial motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a commercial motor vehicle towing or hauling a disabled or wrecked motor vehicle properly registered for use on the highways shall be only the gross vehicle weight of the towing commercial motor vehicle fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles shall be at the following rates:

(a) For a gross vehicle weight of three tons or less, eighteen dollars;

(b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;

(c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;

(d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;

(e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars; and

(f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle having a gross vehicle weight of seven tons and, in addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50; Laws 2012, LB801, § 81.

60-3,148 Commercial motor vehicle; increase of gross vehicle weight; where allowed.

No owner of a commercial motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle is registered except at the office of the county treasurer in the county where such commercial motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

Source: Laws 2005, LB 274, § 148; Laws 2012, LB801, § 82.

60-3,156 Additional fees.

In addition to the registration fees for motor vehicles and trailers, the county treasurer or his or her agent shall collect:

(1) Two dollars for each certificate issued and shall remit two dollars of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund;

(2) Fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the Nebraska Emergency Medical System Operations Fund; and

(3) One dollar and fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the State Recreation Road Fund.

Source: Laws 2005, LB 274, § 156; Laws 2012, LB801, § 83; Laws 2013, LB207, § 3.

60-3,157 Lost or mutilated license plate or registration certificate; duplicate; fees.

If a license plate or registration certificate is lost or mutilated or has become illegible, the person to whom such license plate and registration certificate has been issued shall immediately apply to the county treasurer for a duplicate registration certificate or for new license plates, accompanying his or her application with a fee of one dollar for a duplicate registration certificate and a fee of two dollars and fifty cents for a duplicate or replacement license plate. No fee shall be required under this section if the vehicle or trailer was reported stolen under section 60-178.

Source: Laws 2005, LB 274, § 157; Laws 2009, LB175, § 2; Laws 2012, LB801, § 84.

60-3,158 Methods of payment authorized.

A county treasurer or his or her agent may accept credit cards, charge cards, debit cards, or electronic funds transfers as a means of payment for registration pursuant to section 13-609.

Source: Laws 2005, LB 274, § 158; Laws 2012, LB801, § 85.

60-3,159 Registration fees; fees for previous years.

Upon application to register any motor vehicle or trailer, no registration fee shall be required to be paid thereon for any previous registration period during which such motor vehicle or trailer was not at any time driven or used upon any highway within this state, and the person desiring to register such motor vehicle or trailer without payment of fees for previous registration periods shall file with the county treasurer an affidavit showing where, when, and for how long such motor vehicle or trailer was stored and that the same was not used in this state during such registration period or periods, and upon receipt thereof the county treasurer shall issue a registration certificate.

Source: Laws 2005, LB 274, § 159; Laws 2012, LB801, § 86.

60-3,161 Registration; records; copy or extract provided; electronic access; fee.

(1) The department shall keep a record of each motor vehicle and trailer registered, alphabetically by name of the owner, with cross reference in each instance to the registration number assigned to such motor vehicle and trailer. The record may be destroyed by any public officer having custody of it after three years from the date of its issuance.

(2) The department shall issue a copy of the record of a registered or titled motor vehicle or trailer to any person after receiving from the person the name on the registration, the license plate number, the vehicle identification number, or the title number of a motor vehicle or trailer, if the person provides to the department verification of identity and purpose pursuant to section 60-2906 or 60-2907. A fee of one dollar shall be charged for the copy. An extract of the

entire file of motor vehicles and trailers registered or titled in the state or updates to the entire file may be provided to a person upon payment of a fee of eighteen dollars per thousand records. Any fee received by the department pursuant to this subsection shall be deposited into the Department of Motor Vehicles Cash Fund.

(3) The record of each motor vehicle or trailer registration or title maintained by the department pursuant to this section may be made available electronically through the portal established under section 84-1204 so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. There shall be a fee of one dollar per record for individual records. For batch requests for multiple motor vehicle or trailer title and registration records selected on the basis of criteria of the individual making the request, there shall be a fee of fifty dollars for every request under two thousand records and a fee of eighteen dollars per one thousand records for any number of records over two thousand, plus a reasonable programming fee not to exceed five hundred twenty dollars. All fees collected pursuant to this subsection for electronic access to records through the portal shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 2005, LB 274, § 161; Laws 2008, LB756, § 13; Laws 2012, LB719, § 4.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-3,163 Repealed. Laws 2012, LB 751, § 57.

60-3,166 Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.

It shall be the duty of all law enforcement officers to arrest all violators of any of the provisions of sections 60-373, 60-374, 60-375, 60-376, 60-378, 60-379, and 60-3,114 to 60-3,116. Any person, firm, or corporation, including any motor vehicle, trailer, or boat dealer or manufacturer, who fails to comply with such provisions shall be guilty of a Class V misdemeanor and, in addition thereto, shall pay the county treasurer any and all motor vehicle taxes and fees imposed in sections 60-3,185 and 60-3,190, registration fees, or certification fees due had the motor vehicle or trailer been properly registered or certified according to law.

Source: Laws 2005, LB 274, § 166; Laws 2012, LB801, § 88.

60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.

(1) The department shall annually determine the motor vehicle tax on each motor vehicle registered pursuant to section 60-3,187 and shall cause a notice of the amount to be delivered to the registrant. The notice may be delivered to the registrant at the address shown upon his or her registration certificate or the registrant's most recent address according to information received by the department from the National Change of Address program of the United States Postal Service or delivered electronically to the registrant if the registrant has provided electronic contact information to the department. The notice shall be provided on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

Source: Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53; Laws 2012, LB801, § 89; Laws 2013, LB207, § 4.

60-3,187 Motor vehicle tax schedules; calculation of tax.

(1) The motor vehicle tax schedules are set out in this section.

(2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

| YEAR | FRACTION |
|------------------------|----------|
| First | 1.00 |
| Second | 0.90 |
| Third | 0.80 |
| Fourth | 0.70 |
| Fifth | 0.60 |
| Sixth | 0.51 |
| Seventh | 0.42 |
| Eighth | 0.33 |
| Ninth | 0.24 |
| Tenth and Eleventh | 0.15 |
| Twelfth and Thirteenth | 0.07 |
| Fourteenth and older | 0.00 |

(3) The base tax shall be:

(a) Automobiles and motorcycles - An amount determined using the following table:

MOTOR VEHICLES

| Value when new | Base tax |
|----------------------|----------|
| Up to \$3,999 | \$ 25 |
| \$ 4,000 to \$ 5,999 | 35 |
| \$ 6,000 to \$ 7,999 | 45 |
| \$ 8,000 to \$ 9,999 | 60 |
| \$10,000 to \$11,999 | 100 |
| \$12,000 to \$13,999 | 140 |
| \$14,000 to \$15,999 | 180 |
| \$16,000 to \$17,999 | 220 |
| \$18,000 to \$19,999 | 260 |
| \$20,000 to \$21,999 | 300 |
| \$22,000 to \$23,999 | 340 |
| \$24,000 to \$25,999 | 380 |
| \$26,000 to \$27,999 | 420 |
| \$28,000 to \$29,999 | 460 |
| \$30,000 to \$31,999 | 500 |
| \$32,000 to \$33,999 | 540 |
| \$34,000 to \$35,999 | 580 |
| \$36,000 to \$37,999 | 620 |
| \$38,000 to \$39,999 | 660 |
| \$40,000 to \$41,999 | 700 |
| \$42,000 to \$43,999 | 740 |
| \$44,000 to \$45,999 | 780 |
| \$46,000 to \$47,999 | 820 |
| \$48,000 to \$49,999 | 860 |
| \$50,000 to \$51,999 | 900 |
| \$52,000 to \$53,999 | 940 |
| \$54,000 to \$55,999 | 980 |
| \$56,000 to \$57,999 | 1,020 |
| \$58,000 to \$59,999 | 1,060 |
| \$60,000 to \$61,999 | 1,100 |
| \$62,000 to \$63,999 | 1,140 |
| \$64,000 to \$65,999 | 1,180 |
| \$66,000 to \$67,999 | 1,220 |
| \$68,000 to \$69,999 | 1,260 |
| \$70,000 to \$71,999 | 1,300 |
| \$72,000 to \$73,999 | 1,340 |
| \$74,000 to \$75,999 | 1,380 |
| \$76,000 to \$77,999 | 1,420 |
| \$78,000 to \$79,999 | 1,460 |
| \$80,000 to \$81,999 | 1,500 |
| \$82,000 to \$83,999 | 1,540 |
| \$84,000 to \$85,999 | 1,580 |
| \$86,000 to \$87,999 | 1,620 |
| \$88,000 to \$89,999 | 1,660 |
| \$90,000 to \$91,999 | 1,700 |
| \$92,000 to \$93,999 | 1,740 |
| \$94,000 to \$95,999 | 1,780 |
| \$96,000 to \$97,999 | 1,820 |
| \$98,000 to \$99,999 | 1,860 |
| \$100,000 and over | 1,900 |

(b) Assembled automobiles — \$60

(c) Assembled motorcycles — \$25

(d) Cabin trailers, up to one thousand pounds — \$10

(e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — \$25

(f) Cabin trailers, two thousand pounds and over — \$40

(g) Recreational vehicles, less than eight thousand pounds — \$160

(h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — \$410

(i) Recreational vehicles, twelve thousand pounds and over — \$860

(j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight

(k) Trucks - Over seven tons and less than ten tons — \$360

(l) Trucks - Ten tons and over and less than thirteen tons — \$560

(m) Trucks - Thirteen tons and over and less than sixteen tons — \$760

(n) Trucks - Sixteen tons and over and less than twenty-five tons — \$960

(o) Trucks - Twenty-five tons and over — \$1,160

(p) Buses — \$360

(q) Trailers other than semitrailers — \$10

(r) Semitrailers — \$110

(s) Minitrucks — \$50

(t) Low-speed vehicles — \$50

(4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.

(5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.

(7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-175, the motor vehicle tax shall be reduced by twenty-five percent.

Source: Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7; Laws 2010, LB650, § 28; Laws 2011, LB289, § 22.

60-3,189 Tax exemption; procedure; appeal.

(1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the

county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer within seven days after the date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

Source: Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10; Laws 2012, LB801, § 90.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The department shall annually determine the motor vehicle fee on each motor vehicle registered pursuant to this section and shall cause a notice of the amount to be delivered to the registrant. The notice shall be combined with the notice of the motor vehicle tax required by section 60-3,186.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than \$20,000, and for assembled automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

| YEAR | FRACTION |
|---------------------|----------|
| First through fifth | 1.00 |
| Sixth through tenth | .70 |
| Eleventh and over | .35 |

(4) The base fee shall be:

(a) Automobiles, with a value when new of less than \$20,000, and assembled automobiles — \$5

(b) Automobiles, with a value when new of \$20,000 through \$39,999 — \$20

(c) Automobiles, with a value when new of \$40,000 or more — \$30

(d) Motorcycles — \$10

(e) Recreational vehicles and cabin trailers — \$10

(f) Trucks over seven tons and buses — \$30

(g) Trailers other than semitrailers — \$10

(h) Semitrailers — \$30

(i) Minitrucks — \$10

(j) Low-speed vehicles — \$10.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

Source: Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55; Laws 2010, LB650, § 29; Laws 2011, LB289, § 23; Laws 2012, LB801, § 91; Laws 2013, LB207, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

60-3,191 Alternative fuel; fee.

In addition to any other fee required under the Motor Vehicle Registration Act, a fee for registration of each motor vehicle powered by an alternative fuel shall be charged. The fee shall be seventy-five dollars. The fee shall be collected by the county treasurer and remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2011, LB289, § 24.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on January 1, 2014.

Source: Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2; Laws 2011, LB212, § 3; Laws 2012, LB751, § 14; Laws 2013, LB35, § 2; Laws 2014, LB776, § 3.
Effective date March 29, 2014.

60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; proportional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.

(1) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year. Upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska jurisdiction fleet distance.

Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. All fees received as provided in this section shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the jurisdiction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due,

or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles (a) because of a transfer of ownership of the registered apportionable vehicle, (b) because of loss of possession due to fire, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certifi-

cates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because the apportionable vehicle is disabled and has been removed from service, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, in the case of the unavailability of such certificate or certificates or such other evidence of registration, then by making an affidavit to the division of such disablement and removal from service, receive a credit for that portion of the unused registration fee deposited in the Highway Trust Fund based upon the number of unexpired months remaining in the registration year. No credit shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is removed from service within the same month in which it was registered, no credit shall be allowed for such month. Such credit may be applied against registration fees for new or replacement vehicles incurred within one year after cancellation of registration of the apportionable vehicle for which the credit was allowed. When any such apportionable vehicle is reregistered within the same registration year in which its registration has been canceled, the fee shall be that portion of the registration fee provided to be deposited in the Highway Trust Fund for the remainder of the registration year. The Nebraska-based fleet owner shall make a claim for a credit under this subsection within the registration period or shall be deemed to have forfeited his or her right to the credit.

(9) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(10) In lieu of registration under subsections (1) through (9) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle,

which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(11)(a) This subdivision applies until the implementation date designated by the director pursuant to subdivision (b) of this subsection. Any person may, in lieu of registration under subsections (1) through (9) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be valid for a period of seventy-two hours. The fee for such permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. The carrier enforcement division shall act as an agent for the Division of Motor Carrier Services in collecting such fees and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Trip permits shall be obtained at the first available location whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this subsection as reimbursement for the clerical work of issuing the permits.

(b) This subdivision applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2015. Any person may, in lieu of registration under subsections (1) through (9) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. A trip permit shall be issued before any person required to obtain a trip permit enters this state with such vehicle. The trip permit shall be issued by the director through Internet sales from the department's web site. The trip permit shall be valid for a period of seventy-two hours. The fee for the trip permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5; Laws 2012, LB751, § 15; Laws 2013, LB250, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

60-3,202 Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment.

(1) As registration fees are received by the Division of Motor Carrier Services of the department pursuant to section 60-3,198, the division shall remit the fees to the State Treasurer, less a collection fee of three percent of thirty percent of the registration fees collected. The collection fee shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The State Treasurer shall credit the remainder of the thirty percent of the fees collected to the Motor Vehicle Tax Fund and the remaining seventy percent of the fees collected to the Highway Trust Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Motor Vehicle Tax Fund to the county treasurer of each county in the same proportion as the number of original

apportionable vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer, the county treasurer shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original apportionable vehicle registrations in each county for the immediately preceding calendar year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Motor Vehicle Tax Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 274, § 202; Laws 2007, LB334, § 11; Laws 2012, LB801, § 92.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

60-3,205 Registration certificate; disciplinary actions; director; powers; procedure.

(1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-392 to 75-399.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by regular United States mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If

the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(e) Except as provided in subsections (2) and (3) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10; Laws 2009, LB331, § 6; Laws 2012, LB751, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

International Fuel Tax Agreement Act, see section 66-1401.

60-3,209 Snowmobiles; registration; application.

Application for registration shall be made to the county treasurer in such form as the director prescribes and shall state the name and address of the applicant, state a description of the snowmobile, including color, manufacturer,

and identification number, and be signed by at least one owner. Application forms shall be made available through the county treasurer's office of each county in this state. Upon receipt of the application and the appropriate fee as provided in section 60-3,210, the snowmobile shall be registered by the county treasurer and a validation decal shall be provided which shall be affixed to the upper half of the snowmobile in such manner as the director prescribes. Snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be exempt from affixing validation decals to the snowmobile but are required to carry a valid validation decal with the snowmobile at all times. Application for registration shall be made within fifteen days after the date of purchase.

Source: Laws 2005, LB 274, § 209; Laws 2012, LB801, § 93.

60-3,217 Snowmobiles; fees; disposition.

(1) The county treasurers shall act as agents for the department in the collection of snowmobile registration fees. Twenty-five cents from the funds collected for each such registration shall be retained by the county.

(2) The remaining amount of the fees from registration of snowmobiles shall be remitted to the State Treasurer who shall credit twenty-five percent to the General Fund and seventy-five percent to the Nebraska Snowmobile Trail Cash Fund.

Source: Laws 2005, LB 274, § 217; Laws 2012, LB801, § 94.

60-3,221 Towing of trailers; restrictions; section; how construed.

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

- (i) Passenger car;
- (ii) Commercial motor vehicle or apportionable vehicle;
- (iii) Farm truck;
- (iv) Local truck;
- (v) Minitruck;
- (vi) Recreational vehicle; or
- (vii) Bus;

(b) A utility trailer shall only be towed by:

- (i) A properly registered passenger car;
- (ii) A properly registered commercial motor vehicle or apportionable vehicle;
- (iii) A properly registered farm truck;
- (iv) A properly registered local truck;
- (v) A properly registered minitruck;
- (vi) A properly registered recreational vehicle;
- (vii) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
- (viii) A properly registered well-boring apparatus;
- (ix) A dealer-plated vehicle;
- (x) A personal-use dealer-plated vehicle; or

- (xi) A properly registered bus;
- (c) A farm trailer shall only be towed by a properly registered:
 - (i) Passenger car;
 - (ii) Commercial motor vehicle;
 - (iii) Farm truck; or
 - (iv) Minitruck;
- (d) A commercial trailer shall only be towed by:
 - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
 - (ii) A properly registered local truck;
 - (iii) A properly registered well-boring apparatus;
 - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
 - (v) A dealer-plated vehicle;
 - (vi) A personal-use dealer-plated vehicle;
 - (vii) A properly registered bus; or
 - (viii) A properly registered farm truck;
- (e) A fertilizer trailer shall only be towed by a properly registered:
 - (i) Passenger car;
 - (ii) Commercial motor vehicle or apportionable vehicle;
 - (iii) Farm truck; or
 - (iv) Local truck;
- (f) A pole and cable reel trailer shall only be towed by a properly registered:
 - (i) Commercial motor vehicle or apportionable vehicle; or
 - (ii) Local truck;
- (g) A dealer-plated trailer shall only be towed by:
 - (i) A dealer-plated vehicle;
 - (ii) A properly registered passenger car;
 - (iii) A properly registered commercial motor vehicle or apportionable vehicle;
 - (iv) A properly registered farm truck;
 - (v) A properly registered minitruck; or
 - (vi) A personal-use dealer-plated vehicle; and
- (h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:
 - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
 - (ii) A properly registered local truck;
 - (iii) A properly registered well-boring apparatus;
 - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
 - (v) A dealer-plated vehicle;
 - (vi) A personal-use dealer-plated vehicle;
 - (vii) A properly registered bus; or
 - (viii) A properly registered farm truck.

(2) Nothing in this section shall be construed to waive compliance with the Nebraska Rules of the Road or Chapter 75.

(3) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2; Laws 2011, LB212, § 4.

Cross References

Nebraska Rules of the Road, see section 60-601.

ARTICLE 4
MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section

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- 60-462.01. Federal regulations; adopted.
- 60-462.02. Legislative intent; director; department; powers and duties.
- 60-463. Definitions, where found.
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- 60-465. Commercial motor vehicle, defined.
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- 60-471. Motor vehicle, defined.
- 60-474. Operator's or driver's license, defined.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

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- 60-480. Operators' licenses; classification.
- 60-484. Operator's license required, when; state identification card; application.
- 60-484.02. Digital images and signatures; use; confidentiality; prohibited acts; violation; penalty.
- 60-484.03. Operators' licenses; state identification cards; department; retain copies of source documents.
- 60-484.04. Operators' licenses; state identification cards; applicant present evidence of lawful status.
- 60-484.05. Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal.
- 60-484.06. Operators' licenses; state identification cards; department; power to verify documents.
- 60-485. Repealed. Laws 2012, LB 751, § 57.
- 60-486. Operator's license; license suspended or revoked; effect; appeal.
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- 60-498.01. Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit; procedures; appeal; restrictions relating to ignition interlock permit; prohibited acts relating to ignition interlock devices; additional revocation period.
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(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,112. Sections; applicability.

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60-4,114. County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.

60-4,114.01. Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.

60-4,115. Fees; allocation; identity security surcharge.

60-4,116. Applicant; department; duties.

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60-4,125. LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license; not eligible for ignition interlock permit.

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(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,131. Sections; applicability; terms, defined.

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- 60-4,144.02. Commercial drivers' licenses; CLP-commercial learner's permit; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.
- 60-4,144.03. Temporary CLP-commercial learner's permit or commercial driver's license; issuance; renewal.
- 60-4,144.04. CLP-commercial learner's permit; precondition to issuance of commercial driver's license.
- 60-4,145. Repealed. Laws 2014, LB983, § 69.
- 60-4,146. Application; requirements of federal law; certification.
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- 60-4,149. Commercial drivers' licenses; examination; issuance; delivery.
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- 60-4,150. Commercial drivers' licenses; CLP-commercial learner's permits; replacement licenses; delivery.
- 60-4,151. Commercial driver's license; RCDL-restricted commercial driver's license; SEP-seasonal permit; CLP-commercial learner's permit; form.
- 60-4,153. Issuance of license; department; duties.
- 60-4,154. Issuance of license or permit; director notify Commercial Driver License Information System; department; post information.
- 60-4,156. Repealed. Laws 2014, LB 983, § 69.
- 60-4,157. Driving skills examination; waiver based on third-party tester; licensure in another state; report of examination results.
- 60-4,158. Third-party testers; applicant; criminal history record check; fingerprints; rules and regulations; fees; violation; penalty.
- 60-4,159. Licensee; permit holder; convictions; disqualifications; notification required; violation; penalty.
- 60-4,160. Refusal or denial of application; notice; appeal.
- 60-4,162. Employment as driver; employer; duties; violation; penalty.
- 60-4,164. Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.
- 60-4,167. Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.
- 60-4,167.01. Alcoholic liquor; disqualification decision; director; duties.
- 60-4,168. Disqualification; when.
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- 60-4,171. Issuance of Class O or M operator's license; reinstatement of commercial driver's license or CLP-commercial learner's permit; when.
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(j) STATE IDENTIFICATION CARDS

- 60-4,180. State identification card; issuance authorized; prior cards; invalid.
- 60-4,181. State identification cards; issuance; requirements; form; delivery; cancellation.

(k) POINT SYSTEM

- 60-4,182. Point system; offenses enumerated.
- 60-4,184. Revocation of license; notice; failure to return license; procedure; penalty; appeal; effect.

Section

(l) VETERAN NOTATION

60-4,189. Operator's license; state identification card; notation of word "veteran"; Department of Motor Vehicles; duties; replacement license or card.

(e) GENERAL PROVISIONS

60-462 Act, how cited.

Sections 60-462 to 60-4,189 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, § 60-402; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1; Laws 2011, LB158, § 1; Laws 2011, LB178, § 2; Laws 2011, LB215, § 1; Laws 2013, LB93, § 1; Laws 2014, LB983, § 2. Operative date March 29, 2014.

60-462.01 Federal regulations; adopted.

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2014:

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16; Laws 2009, LB331, § 7; Laws 2010, LB805, § 3; Laws 2011, LB178, § 3; Laws 2011, LB212, § 5; Laws 2012, LB751, § 17; Laws 2013, LB35, § 3; Laws 2014, LB776, § 4; Laws 2014, LB983, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB776, section 4, with LB983, section 3, to reflect all amendments.

Note: Changes made by LB776 became effective March 29, 2014. Changes made by LB983 became operative March 29, 2014.

60-462.02 Legislative intent; director; department; powers and duties.

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The department shall adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

Source: Laws 2008, LB911, § 2; Laws 2009, LB331, § 8; Laws 2011, LB215, § 2.

60-463 Definitions, where found.

For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

Source: Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2; Laws 2008, LB911, § 3; Laws 2014, LB983, § 4.
Operative date March 29, 2014.

60-464 Commercial driver's license, defined.

Commercial driver's license means an operator's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act to an individual which authorizes such individual to operate a class of commercial motor vehicle.

Source: Laws 1989, LB 285, § 14; Laws 2014, LB983, § 5.
Operative date July 8, 2015.

60-465 Commercial motor vehicle, defined.

(1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);

(b) Has a gross vehicle weight rating or gross vehicle weight of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include:

(a) A covered farm vehicle;

(b) Any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339;

(c) Any emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions which is equipped with audible and visual signals and operated by a public or volunteer fire department; or

(d) Any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by persons identified in section 60-4,131.01.

Source: Laws 1989, LB 285, § 15; Laws 2005, LB 76, § 4; Laws 2005, LB 274, § 235; Laws 2006, LB 853, § 8; Laws 2006, LB 1007, § 5; Laws 2010, LB805, § 4; Laws 2014, LB983, § 6.
Operative date March 29, 2014.

60-465.02 Covered farm vehicle, defined.

(1) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(a) That:

(i) Is traveling in the state in which the vehicle is registered or another state;

(ii) Is operated by:

(A) A farm owner or operator;

(B) A ranch owner or operator; or

(C) An employee or family member of an individual specified in subdivision (1)(a)(ii)(A) or (1)(a)(ii)(B) of this section;

(iii) Is transporting to or from a farm or ranch:

(A) Agricultural commodities;

(B) Livestock; or

(C) Machinery or supplies;

(iv) Except as provided in subsection (2) of this section, is not used in the operations of a for-hire motor carrier; and

(v) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(b) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(i) Less than twenty-six thousand one pounds; or

(ii) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(2) Covered farm vehicle includes a motor vehicle that meets the requirements of subsection (1) of this section, except for subdivision (1)(a)(iv) of this section, and:

(a) Is operated pursuant to a crop share farm lease agreement;

(b) Is owned by a tenant with respect to that agreement; and

(c) Is transporting the landlord's portion of the crops under that agreement.

(3) Covered farm vehicle does not include:

(a) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(b) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F.

Source: Laws 2014, LB983, § 7.

Operative date March 29, 2014.

60-471 Motor vehicle, defined.

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) self-propelled chairs used by persons who are disabled, (2) farm tractors, (3) farm tractors used occasionally outside

general farm usage, (4) road rollers, (5) vehicles which run only on rails or tracks, (6) electric personal assistive mobility devices as defined in section 60-618.02, and (7) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

Source: Laws 1989, LB 285, § 21; Laws 1993, LB 370, § 68; Laws 2002, LB 1105, § 445; Laws 2010, LB650, § 30; Laws 2011, LB289, § 25; Laws 2012, LB1155, § 12.

60-474 Operator's or driver's license, defined.

Operator's or driver's license shall mean any license or permit to operate a motor vehicle issued under the laws of this state, including:

- (1) Any replacement license or instruction permit;
- (2) The privilege of any person to drive a motor vehicle whether such person holds a valid license;
- (3) Any nonresident's operating privilege which shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation of a motor vehicle in this state by such person or the use in this state of a vehicle owned by such person;
- (4) An employment driving permit issued as provided by sections 60-4,129 and 60-4,130; and
- (5) A medical hardship driving permit issued as provided by sections 60-4,130.01 and 60-4,130.02.

Source: Laws 1989, LB 285, § 24; Laws 1993, LB 105, § 5; Laws 1993, LB 370, § 69; Laws 2014, LB777, § 2.
Effective date July 18, 2014.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479 Sections; applicability.

Sections 60-479.01 to 60-4,111.01, 60-4,113, 60-4,114, 60-4,115 to 60-4,118, and 60-4,182 to 60-4,189 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

Source: Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7; Laws 2011, LB215, § 3; Laws 2013, LB93, § 2; Laws 2014, LB983, § 8.
Operative date March 29, 2014.

60-479.01 Fraudulent document recognition training; criminal history record information check; lawful status check; cost.

(1) All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

(2) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. All persons and agents of the department involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or who have the ability to affect information on such licenses or cards shall be subject to a criminal history record information check, including a check of prior employment references, and a lawful status check as required by 6 C.F.R. part 37, as such part existed on January 1, 2014. Such persons and agents shall provide fingerprints which shall be submitted to the Federal Bureau of Investigation. The bureau shall use its records for the criminal history record information check.

(3) Upon receipt of a request pursuant to subsection (2) of this section, the Nebraska State Patrol shall undertake a search for criminal history record information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states, if authorized by federal law. The Nebraska State Patrol shall issue a report to the employing public agency that shall include the criminal history record information concerning the applicant. The cost of any background check shall be borne by the employer of the person or agent.

(4) Any person convicted of any disqualifying offense as provided in 6 C.F.R. part 37, as such part existed on January 1, 2014, shall not be involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or involved in any capacity in which such person would have the ability to affect information on such licenses or cards. Any employee or prospective employee of the department shall be provided notice that he or she will undergo such criminal history record information check prior to employment or prior to any involvement with the issuance of operators' licenses or state identification cards.

Source: Laws 2008, LB911, § 8; Laws 2011, LB215, § 4; Laws 2012, LB751, § 18; Laws 2013, LB35, § 4; Laws 2014, LB776, § 5. Effective date March 29, 2014.

60-480 Operators' licenses; classification.

Operators' licenses issued by the department pursuant to the Motor Vehicle Operator's License Act shall be classified as follows:

(1) Class O license. The operator's license which authorizes the person to whom it is issued to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle;

(2) Class M license. The operator's license or endorsement on a Class O license, provisional operator's permit, learner's permit, school permit, or commercial driver's license which authorizes the person to whom it is issued to operate a motorcycle on highways;

(3) CDL-commercial driver's license. The operator's license which authorizes the person to whom it is issued to operate a class of commercial motor vehicle or any motor vehicle, except a motorcycle, on highways;

(4) CLP-commercial learner's permit. A permit which when carried with a Class O license authorizes an individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training. When issued to a commercial driver's license holder, a CLP-commercial learner's permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current commercial driver's license is not valid;

(5) RCDL-restricted commercial driver's license. The class of commercial driver's license which, when held with an annual seasonal permit, authorizes a seasonal commercial motor vehicle operator as defined in section 60-4,146.01 to operate any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle for purposes of a farm-related or ranch-related service industry as defined in such section within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served as provided in such section or any other motor vehicle, except a motorcycle, on highways;

(6) POP-provisional operator's permit. A motor vehicle operating permit with restrictions issued pursuant to section 60-4,120.01 to a person who is at least sixteen years of age but less than eighteen years of age which authorizes the person to operate any motor vehicle except a commercial motor vehicle or motorcycle;

(7) SCP-school permit. A permit issued to a student between fourteen years and two months of age and sixteen years of age for the purpose of driving in accordance with the requirements of section 60-4,124;

(8) FMP-farm permit. A permit issued to a person for purposes of operating farm tractors and other motorized implements of farm husbandry on highways in accordance with the requirements of section 60-4,126;

(9) LPD-learner's permit. A permit issued in accordance with the requirements of section 60-4,123 to a person at least fifteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, for learning purposes when accompanied by a licensed operator who is at least twenty-one years of age and who possesses a valid operator's license issued by this state or another state;

(10) LPE-learner's permit. A permit issued to a person at least fourteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, while learning to drive in preparation for application for a school permit;

(11) EDP-employment driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,129 and 60-4,130;

(12) IIP-ignition interlock permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, which is equipped with an ignition interlock device;

(13) SEP-seasonal permit. A permit issued to a person who holds a restricted commercial driver's license authorizing the person to operate a commercial motor vehicle, as prescribed by section 60-4,146.01, for no more than one hundred eighty consecutive days in any twelve-month period. The seasonal permit shall be valid and run from the date of original issuance of the permit

for one hundred eighty days and from the date of annual revalidation of the permit; and

(14) MHP-medical hardship driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,130.01 and 60-4,130.02.

Source: Laws 1989, LB 285, § 30; Laws 1990, LB 980, § 8; Laws 1993, LB 105, § 6; Laws 1993, LB 420, § 4; Laws 1998, LB 320, § 2; Laws 1999, LB 704, § 4; Laws 2001, LB 387, § 3; Laws 2005, LB 675, § 1; Laws 2008, LB736, § 1; Laws 2014, LB983, § 9.
Operative date July 8, 2015.

60-484 Operator’s license required, when; state identification card; application.

(1) Except as otherwise provided in the Motor Vehicle Operator’s License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator’s license for that purpose.

(2) Application for an operator’s license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subsection (3) of this section.

(3) The applicant shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subsection (6) of this section, and a brief physical description of himself or herself. The applicant (a) may also complete the voter registration portion pursuant to section 32-308, (b) shall be provided the advisement language required by subsection (5) of section 60-6,197, (c) shall answer the following:

(i) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

- (A) lost voluntary control or consciousness yes no
- (B) experienced vertigo or multiple episodes of dizziness or fainting yes no
- (C) experienced disorientation yes no
- (D) experienced seizures yes no
- (E) experienced impairment of memory, memory loss yes no

Please explain:

(ii) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) yes no

Please explain:

(iii) Since the issuance of your last driver’s license/permit, has your health or medical condition changed or worsened? yes no

Please explain, including how the above affects your ability to drive: , and (d) may answer the following:

(i) Do you wish to register to vote as part of this application process?

(ii) Do you wish to have the word "veteran" displayed on the front of your operator's license or state identification card to show that you served in the armed forces of the United States? (To be eligible you must register with the Nebraska Department of Veterans' Affairs registry.)

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(iii) Do you wish to be an organ and tissue donor?

(iv) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(v) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(4) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(5) The social security number shall not be printed on the operator's license or state identification card and shall be used only (a) to furnish information to the United States Selective Service System under section 60-483, (b) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (c) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (d) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, (e) to furnish information to the Department of Revenue under section 77-362.02, or (f) to furnish information to the Secretary of State for purposes of the Election Act.

(6)(a) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall be those provided in subsection (1) of section 60-484.04.

(b) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (6)(a) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(c) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(7) Any individual applying for an operator's license or a state identification card who indicated his or her wish to have the word "veteran" displayed on the front of such license or card shall comply with section 60-4,189.

(8) No person shall be a holder of an operator's license and a state identification card at the same time.

Source: Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675; Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 153, § 9; Laws 1986, LB 878, § 1; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9; Laws 2010, LB879, § 3; Laws 2011, LB215, § 5; Laws 2013, LB93, § 3; Laws 2014, LB661, § 16; Laws 2014, LB983, § 10.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB661, section 16, with LB983, section 10, to reflect all amendments.

Note: Changes made by LB661 became effective July 18, 2014. Changes made by LB983 became operative July 8, 2015.

Cross References

Address Confidentiality Act, see section 42-1201.

Donor Registry of Nebraska, see section 71-4822.

Election Act, see section 32-101.

Nebraska Department of Veterans' Affairs registry, see section 80-414.

60-484.02 Digital images and signatures; use; confidentiality; prohibited acts; violation; penalty.

(1) Each applicant for an operator's license or state identification card shall have his or her digital image captured. Digital images shall be preserved for use as prescribed in sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used for issuing operators' licenses and state identification cards. The images may be retrieved only by the Department of Motor Vehicles for issuing renewal and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(2) Upon application for an operator's license or state identification card, each applicant shall provide his or her signature in a form prescribed by the department. Digital signatures shall be preserved for use on original, renewal, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (4) of this section.

(3) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital image except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a federal, state, or local agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the informa-

tion and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department or law enforcement officer that knowingly discloses or knowingly permits disclosure of a digital image or digital signature in violation of this section shall be guilty of a Class I misdemeanor.

(4) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital signature except (a) to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release or (b) to the office of the Secretary of State for the purpose of voter registration as described in section 32-304, 32-308, or 32-309 upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. No employee or official in the office of the Secretary of State shall release a digital signature except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department, law enforcement officer, or employee or official in the office of the Secretary of State that knowingly discloses or knowingly permits disclosure of a digital signature in violation of this section shall be guilty of a Class I misdemeanor.

Source: Laws 2001, LB 574, § 4; Laws 2004, LB 560, § 38; Laws 2005, LB 1, § 3; Laws 2009, LB372, § 1; Laws 2010, LB805, § 5; Laws 2014, LB661, § 17; Laws 2014, LB777, § 3.
Effective date July 18, 2014.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB661, section 17, with LB777, section 3, to reflect all amendments.

60-484.03 Operators' licenses; state identification cards; department; retain copies of source documents.

The department shall retain copies of source documents presented by all individuals applying for or holding operators' licenses or state identification cards. Copies retained by the department shall be held in secured storage and managed to meet the requirements of the Uniform Motor Vehicle Records Disclosure Act and sections 60-484, 60-484.02, and 60-4,144.

Source: Laws 2011, LB215, § 6; Laws 2014, LB983, § 11.
Operative date July 8, 2015.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-484.04 Operators' licenses; state identification cards; applicant present evidence of lawful status.

(1) Except as provided in section 60-4,144 with respect to operators of commercial motor vehicles, before being issued any other type of operator's license or a state identification card under the Motor Vehicle Operator's License Act, the department shall require an applicant to present valid documentary evidence that he or she has lawful status in the United States. Lawful status may be shown by:

- (a) A valid, unexpired United States passport;
- (b) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth;
- (c) A Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350, or FS-545;
- (d) A valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services;
- (e) An unexpired employment authorization document (EAD) issued by the United States Department of Homeland Security, Form I-766 or Form I-688B;
- (f) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States;
- (g) A Certificate of Naturalization issued by the United States Department of Homeland Security, Form N-550 or Form N-570;
- (h) A Certificate of Citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;
- (i) A driver's license or identification card issued in compliance with the standards established by the REAL ID Act of 2005, Public Law 109-13, division B, section 1, 119 Stat. 302; or
- (j) Such other documents as the director may approve.

(2)(a) If an applicant presents one of the documents listed under subdivision (1)(a), (b), (c), (d), (g), or (h) of this section, the verification of the applicant's identity in the manner prescribed in section 60-484 will also provide satisfactory evidence of lawful status.

(b) If the applicant presents one of the identity documents listed under subdivision (1)(e), (f), or (i) of this section, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subsection (1) of this section or documentation issued by the United States Department of Homeland Security or other federal agencies demonstrating lawful status as determined by the United States Citizenship and Immigration Services.

(3) An applicant may present other documents as designated by the director as proof of lawful status. Any documents accepted shall be recorded according to a written exceptions process established by the director.

Source: Laws 2011, LB215, § 7; Laws 2014, LB983, § 12.
Operative date July 8, 2015.

60-484.05 Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal.

(1) The department shall only issue an operator's license or a state identification card that is temporary to any applicant who presents documentation under

sections 60-484 and 60-484.04 that shows his or her authorized stay in the United States is temporary. An operator's license or a state identification card that is temporary shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(2) An operator's license or state identification card that is temporary shall clearly indicate that it is temporary with a special notation on the front of the license or card and shall state the date on which it expires.

(3) An operator's license or state identification card that is temporary may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the operator's license or state identification card that is temporary has been extended by the United States Department of Homeland Security.

Source: Laws 2011, LB215, § 8; Laws 2014, LB983, § 13.
Operative date July 18, 2014.

60-484.06 Operators' licenses; state identification cards; department; power to verify documents.

Before issuing any operator's license or state identification card under the Motor Vehicle Operator's License Act, the department may verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by a person pursuant to sections 60-484, 60-484.04, and 60-4,144.

Source: Laws 2011, LB215, § 9; Laws 2014, LB983, § 14.
Operative date July 8, 2015.

60-485 Repealed. Laws 2012, LB 751, § 57.

60-486 Operator's license; license suspended or revoked; effect; appeal.

(1) No person shall be licensed to operate a motor vehicle by the State of Nebraska if such person has an operator's license currently under suspension or revocation in this state or any other state or jurisdiction in the United States.

(2) If a license is issued to a person while his or her operator's license was suspended or revoked in this state or any other state or jurisdiction, the Department of Motor Vehicles may cancel the license upon forty-five days' written notice by regular United States mail to the licensee's last-known address. The cancellation may be appealed as provided in section 60-4,105.

(3) When such a person presents to the department an official notice from the state or jurisdiction that suspended or revoked his or her motor vehicle operator's license that such suspension or revocation has been terminated, he or she may then be licensed to operate a motor vehicle by the State of Nebraska.

Source: Laws 1986, LB 153, § 7; R.S.1943, (1988), § 60-403.05; Laws 1989, LB 285, § 37; Laws 1999, LB 704, § 6; Laws 2001, LB 38, § 13; Laws 2012, LB751, § 19.

60-487 Cancellation of certain licenses or permits; when.

(1)(a) This subsection applies until July 8, 2015. If any magistrate or judge finds in his or her judgment of conviction that the application or issuance

certificate pursuant to which the director has issued an operator's license under the Motor Vehicle Operator's License Act contains any false or fraudulent statement deliberately and knowingly made to any officer as to any matter material to the issuance of such license or does not contain required or correct information or that the person to whom the license was issued was not eligible to receive such license, then the license shall be absolutely void from the date of issue and such motor vehicle operator shall be deemed to be not licensed to operate a motor vehicle. Such license shall be at once canceled of record in his or her office by the director upon receipt of a copy of such judgment of conviction. The director may, upon his or her own motion, summarily cancel any license for any of the reasons set forth in this subsection if such reason or reasons affirmatively appear on his or her official records.

(b) If the director determines, in a check of an applicant's license status and record prior to issuing a commercial driver's license or an LPC-learner's permit, or at any time after the commercial driver's license or LPC-learner's permit is issued, that the applicant falsified information contained in the application or in the medical examiner's certificate, the director may summarily cancel the person's commercial driver's license or LPC-learner's permit or his or her pending application as provided in subdivision (1)(a) of this section and disqualify the person from operating a commercial motor vehicle for sixty days.

(2)(a) This subsection applies beginning July 8, 2015. If any magistrate or judge finds in his or her judgment of conviction that the application or issuance certificate pursuant to which the director has issued an operator's license under the Motor Vehicle Operator's License Act contains any false or fraudulent statement deliberately and knowingly made to any officer as to any matter material to the issuance of such license or does not contain required or correct information or that the person to whom the license was issued was not eligible to receive such license, then the license shall be absolutely void from the date of issue and such motor vehicle operator shall be deemed to be not licensed to operate a motor vehicle. Such license shall be at once canceled of record in his or her office by the director upon receipt of a copy of such judgment of conviction. The director may, upon his or her own motion, summarily cancel any license for any of the reasons set forth in this section if such reason or reasons affirmatively appear on his or her official records.

(b) If the director determines, in a check of an applicant's license status and record prior to issuing a CLP-commercial learner's permit or commercial driver's license, or at any time after the CLP-commercial learner's permit or commercial driver's license is issued, that the applicant falsified information contained in the application or in the medical examiner's certificate, the director may summarily cancel the person's CLP-commercial learner's permit or commercial driver's license or his or her pending application as provided in subdivision (2)(a) of this section and disqualify the person from operating a commercial motor vehicle for sixty days.

Source: Laws 1929, c. 148, § 10, p. 517; C.S.1929, § 60-410; Laws 1937, c. 141, § 20, p. 517; Laws 1941, c. 124, § 1, p. 469; C.S.Supp.,1941, § 60-410; R.S.1943, § 60-416; R.S.1943, (1988), § 60-416; Laws 1989, LB 285, § 38; Laws 1991, LB 420, § 7; Laws 1999, LB 704, § 7; Laws 2001, LB 38, § 14; Laws 2003, LB 562, § 4; Laws 2011, LB215, § 10; Laws 2014, LB983, § 15.
Operative date March 29, 2014.

60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, the Nebraska Rules of the Road, or section 28-524, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 28-394, 28-1254, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

Source: Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c. 219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 165, § 1, p. 582; Laws 1957, c. 366, § 15, p. 1255; Laws 1972, LB 1032, § 247; Laws 1972, LB 1058, § 2; Laws 1973, LB 226, § 25; Laws 1973, LB 317, § 1; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 564, § 13; Laws 1993, LB 575, § 15; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2; Laws 2009, LB63, § 32; Laws 2011, LB667, § 23.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Nebraska Rules of the Road, see section 60-601.

60-498.01 Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit; procedures; appeal; restrictions relating to ignition interlock permit; prohibited acts relating to ignition interlock devices; additional revocation period.

(1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by

driving with an excessive concentration of alcohol in his or her body or (b) by driving while under the influence of alcohol.

(2) If a person arrested as described in subsection (2) of section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by section 60-6,197, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test. The director may accept a sworn report submitted electronically.

(3) If a person arrested as described in subsection (2) of section 60-6,197 submits to the chemical test of blood or breath required by section 60-6,197, the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, and the test results are available to the arresting peace officer while the arrested person is still in custody, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. The director may accept a sworn report submitted electronically.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The peace officer shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the person's arrest or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the information form, the application for an ignition interlock permit, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for fifteen days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5)(a) If the results of a chemical test indicate the presence of alcohol in a concentration specified in section 60-6,196, the results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served as required by subsection (4) of this section, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section within ten days after receipt of the results of the chemical test. If the sworn report is not received within ten days, the revocation shall not take effect. The director may accept a sworn report submitted electronically.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The director shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing and an application for an ignition interlock permit. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the mailing of the notice of revocation or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the ignition interlock permit application and the notice of revocation. The revocation shall be effective fifteen days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires fifteen days after the date of mailing. Any arrested person who desires an administrative license revocation hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall deny the petition.

(6)(a) An arrested person's operator's license confiscated pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of fifteen days after the date of arrest, and the petition requesting the hearing shall be completed and delivered to the department or postmarked within ten days after the person's arrest. An arrested person's operator's license confiscated pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of fifteen days after the date of mailing of the notice of revocation by the director, and the arrested person shall postmark or return to the director a petition within ten days after the mailing of the notice of revocation if the arrested person desires an administrative license revocation hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director.

(b) The director shall conduct the hearing within twenty days after a petition is received by the director. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not

prevent the automatic revocation of the petitioner's operator's license at the expiration of the fifteen-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

(7)(a) Any arrested person who submits an application for an ignition interlock permit in lieu of a petition for an administrative license revocation hearing regarding the revocation of his or her operator's license pursuant to this section shall complete the application for an ignition interlock permit in which such person acknowledges that he or she understands that he or she will have his or her license administratively revoked pursuant to this section, that he or she waives his or her right to a hearing to contest the revocation, and that he or she understands that he or she is required to have an ignition interlock permit in order to operate a motor vehicle for the period of the revocation and shall include sufficient evidence that an ignition interlock device is installed on one or more vehicles that will be operated by the arrested person. Upon the arrested person's completion of the ignition interlock permit application process, the department shall issue the person an ignition interlock permit, subject to any applicable requirements and any applicable no-drive period if the person is otherwise eligible.

(b) An arrested person who is issued an ignition interlock permit pursuant to this section shall receive day-for-day credit for the period he or she has a valid ignition interlock permit against the license revocation period imposed by the court arising from the same incident.

(c) If a person files a completed application for an ignition interlock permit, the person waives his or her right to contest the revocation of his or her operator's license.

(8) Any person who has not petitioned for an administrative license revocation hearing and is subject to an administrative license revocation may immediately apply for an ignition interlock permit to use during the applicable period

of revocation set forth in section 60-498.02, subject to the following additional restrictions:

(a) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has no prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, the ignition interlock permit will be immediately available fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;

(b) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, the ignition interlock permit will be available beginning fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person plus forty-five additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;

(c) If such person refused to submit to a chemical test of blood, breath, or urine as required by section 60-6,197, the ignition interlock permit will be available beginning fifteen days after the date of arrest plus ninety additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; and

(d) Any person who petitions for an administrative license revocation hearing shall not be eligible for an ignition interlock permit unless ordered by the court at the time of sentencing for the related criminal proceeding.

(9) The director shall adopt and promulgate rules and regulations to govern the conduct of the administrative license revocation hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. Any motion for discovery filed by the petitioner shall entitle the prosecutor to receive full statutory discovery from the petitioner upon a prosecutor's request to the relevant court pursuant to section 29-1912 in any criminal proceeding arising from the same arrest. A copy of the motion for discovery shall be filed with the department and a copy provided to the prosecutor in the jurisdiction in which the petitioner was arrested. Incomplete discovery shall not stay the hearing unless the petitioner requests a continuance. All proceedings before the hearing officer shall be recorded. Upon receipt of the arresting peace officer's sworn report, the director's order of revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. The director shall make a determination of the issue within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-498.04.

(10) Any person who tampers with or circumvents an ignition interlock device installed pursuant to sections 60-498.01 to 60-498.04 or who operates a motor vehicle not equipped with a functioning ignition interlock device required pursuant to such sections or otherwise is in violation of the purposes for operation indicated on the ignition interlock permit under such sections shall, in addition to any possible criminal charges, have his or her revocation period and ignition interlock permit extended for six months beyond the end of the original revocation period.

(11) A person under the age of eighteen years who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 1972, LB 1095, § 5; C.S.Supp.,1972, § 39-727.16; Laws 1992, LB 872, § 4; Laws 1992, LB 291, § 9; R.S.Supp.,1992, § 39-669.15; Laws 1993, LB 370, § 300; Laws 1996, LB 939, § 3; Laws 1998, LB 309, § 15; Laws 2001, LB 38, § 51; R.S.Supp.,2002, § 60-6,205; Laws 2003, LB 209, § 4; Laws 2004, LB 208, § 5; Laws 2011, LB667, § 24; Laws 2012, LB751, § 20.

60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restriction on operation of motor vehicle.

(1) At the expiration of fifteen days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of one hundred eighty days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2) A person operating a motor vehicle under an ignition interlock permit issued pursuant to sections 60-498.01 to 60-498.04 shall only operate a motor vehicle equipped with an ignition interlock device. All permits issued pursuant to such sections shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(3) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(4)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) The prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196;

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court; or

(iii) In the criminal action on the charge of a violation of section 60-6,196 arising from the same incident, the court held one of the following:

(A) The peace officer did not have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; or

(B) The person was not operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a criminal charge is filed or refiled for a violation of section 60-6,196 pursuant to an arrest for which all administrative license revocation proceedings were dismissed under this subsection, the director, upon notification or discovery, may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing or refiling of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Source: Laws 1972, LB 1095, § 6; C.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3; Laws 2009, LB497, § 2; Laws 2010, LB924, § 1; Laws 2011, LB667, § 25; Laws 2011, LB675, § 2; Laws 2012, LB751, § 21; Laws 2013, LB158, § 1.

60-498.03 Operator's license revocation decision; notice; contents.

(1) The director shall reduce the decision revoking an operator's license under sections 60-498.01 to 60-498.04 to writing, and the director shall notify the person in writing of the revocation. The notice shall set forth the period of revocation and be served by mailing it to such person to the address provided to the director at the administrative license revocation hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not revoke the operator's license, the director shall immediately notify the person in writing of the decision. The notice shall set

forth the time and place the person may obtain his or her license. The notice shall be mailed as provided in subsection (1) of this section. No reinstatement fee shall be charged for return of the confiscated operator's license pursuant to this subsection.

Source: Laws 1972, LB 1095, § 7; C.S.Supp.,1972, § 39-727.18; Laws 1992, LB 291, § 12; R.S.Supp.,1992, § 39-669.17; Laws 1993, LB 370, § 302; Laws 2001, LB 38, § 53; R.S.Supp.,2002, § 60-6,207; Laws 2003, LB 209, § 6; Laws 2011, LB667, § 26.

60-498.04 License revocation; appeal; notice of judgment.

Any person who feels himself or herself aggrieved because of the revocation of his or her operator's license under sections 60-498.01 to 60-498.04 may appeal therefrom to the district court of the county where the alleged events occurred for which he or she was arrested, and the appeal shall be in accordance with section 84-917. The district court shall allow any party to an appeal to appear by telephone at any proceeding before the court for purposes of the appeal. Such appeal shall not suspend the order of revocation. The court shall provide notice of the final judgment to the department.

Source: Laws 1972, LB 1095, § 8; C.S.Supp.,1972, § 39-727.19; Laws 1988, LB 352, § 31; R.S.1943, (1988), § 39-669.18; Laws 1993, LB 370, § 303; Laws 1998, LB 309, § 17; R.S.1943, (1998), § 60-6,208; Laws 2003, LB 209, § 7; Laws 2011, LB667, § 27.

60-4,100 Suspension; when authorized.

(1) The director shall suspend the operator's license of any resident of this state:

(a) Who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction outside this state pursuant to the Nonresident Violator Compact of 1977 until satisfactory evidence of compliance with the terms of the citation has been furnished to the director; or

(b) Who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction inside this state until satisfactory evidence of compliance with the terms of the citation has been furnished to the director.

(2) The court having jurisdiction over the offense for which the citation has been issued shall notify the director of a violation of a promise to comply with the terms of the citation only after twenty working days have elapsed from the date of the failure to comply.

(3) Upon notice to the director that a resident has violated a promise to comply with the terms of a traffic citation as provided in this section, the director shall not suspend such resident's license until he or she has sent written notice to such resident by regular United States mail to the person's last-known mailing address or, if such address is unknown, to the last-known residence address of such person as shown by the records of the Department of Motor Vehicles. Such notice shall state that such resident has twenty working days after the date of the notice to show the director that the resident has complied with the terms of such traffic citation. No suspension shall be entered by the director if the resident complies with the terms of a citation during such

twenty working days. If the resident fails to comply on or before twenty working days after the date of notice, the director shall summarily suspend the operator's license and issue an order. The order shall be sent by regular United States mail to the person's last-known mailing address as shown by the records of the department.

(4) The reinstatement fee required under section 60-4,100.01 shall be waived if five years have passed since issuance of the license suspension order under this section.

Source: Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-426; Laws 1981, LB 344, § 2; Laws 1986, LB 153, § 10; R.S.1943, (1988), § 60-426; Laws 1989, LB 285, § 50; Laws 1991, LB 420, § 10; Laws 1993, LB 491, § 11; Laws 1997, LB 10, § 1; Laws 2001, LB 38, § 21; Laws 2012, LB751, § 22.

Cross References

Nonresident Violator Compact of 1977, see section 1-119, Vol. 2A, Appendix.

60-4,108 Operating motor vehicle during period of suspension, revocation, or impoundment; penalties; juvenile; violation; handled in juvenile court.

(1) It shall be unlawful for any person to operate a motor vehicle during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to conviction or convictions for violation of any law or laws of this state, by an order of any court, or by an administrative order of the director. Except as otherwise provided by subsection (3) of this section or by other law, any person so offending shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, (b) for a second or third such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, and (c) for a fourth or subsequent such offense, be guilty of a Class I misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(2) It shall be unlawful for any person to operate a motor vehicle (a) during any period that his or her operator's license has been suspended, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license. Except as provided in subsection (3) of this section, any person so offending shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person

at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor vehicle for a period of one year from the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(3) If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of this section.

Source: Laws 1957, c. 275, § 2, p. 1002; Laws 1959, c. 293, § 3, p. 1099; Laws 1977, LB 39, § 81; Laws 1979, LB 149, § 1; Laws 1985, LB 356, § 1; Laws 1986, LB 153, § 12; R.S.1943, (1988), § 60-430.01; Laws 1989, LB 285, § 58; Laws 1997, LB 772, § 4; Laws 2001, LB 38, § 25; Laws 2010, LB800, § 34; Laws 2012, LB1155, § 13.

60-4,110 Operating motor vehicle during period of suspension, revocation, or impoundment; impounding of motor vehicle; release, when authorized; restitution authorized.

(1) Every motor vehicle, regardless of the registered owner of the motor vehicle, being operated by a person whose operator's license has been suspended, revoked, or impounded pursuant to a conviction or convictions for violation of section 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02 or by an order of any court or an administrative order of the director is hereby declared a public nuisance. The motor vehicle may be seized upon the arrest of the operator of the motor vehicle and impounded at the expense of the owner of the motor vehicle. If such operator's license is suspended, revoked, or impounded pursuant to subdivision (1)(c) of section 60-4,108 or section 60-498.01, 60-498.02, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the motor vehicle shall be impounded for not less than ten days nor more than thirty days. No motor vehicle impounded under this section shall be impounded for a period of time exceeding thirty days except as provided in subsection (3) of this section.

(2) Any motor vehicle impounded shall be released:

(a) To the holder of a bona fide lien on the motor vehicle executed prior to such impoundment when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying his or her lien on the motor vehicle;

(b) To the titled owner of the motor vehicle when the titled owner is a lessor. Upon learning the address or telephone number of the rental or leasing company which owns the motor vehicle, the impounding law enforcement agency shall immediately contact the company and inform it that the motor vehicle is available for the company to take possession; or

(c) To the registered owner, a registered co-owner, or a spouse of the owner upon good cause shown by an affidavit or otherwise to the court before which the complaint is pending against the operator that the impounded motor

vehicle is essential to the livelihood of the owner, co-owner, or spouse or the dependents of such owner, co-owner, or spouse.

(3) Any person who, at the direction of a peace officer, tows and stores a motor vehicle pursuant to this section shall have a lien upon such motor vehicle while in his or her possession for reasonable towing and storage charges and shall have a right to retain such motor vehicle until such charges are paid.

(4) If the registered owner of a motor vehicle was not the operator of the motor vehicle whose actions caused the motor vehicle to be impounded, the registered owner of the motor vehicle may recover civilly from the operator of the motor vehicle all expenses incurred by reason of the impoundment. In the case of a criminal action, the court may order such operator of the motor vehicle to pay restitution to the registered owner in an amount equal to any expenses incurred with respect to impoundment.

Source: Laws 1961, c. 321, § 1, p. 1024; Laws 1961, c. 322, § 1, p. 1025; R.S.1943, (1988), § 60-430.06; Laws 1989, LB 285, § 60; Laws 1998, LB 309, § 4; Laws 2003, LB 209, § 8; Laws 2012, LB1155, § 14.

60-4,111.01 Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

(1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator's license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator's license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity.

(b) For purposes of compliance with the provisions of sections 28-458 to 28-462, a seller who sells methamphetamine precursors pursuant to such sections may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The seller may store only the following information obtained from the license or card: Name, age, address, type of identification presented by the customer, the

governmental entity that issued the identification, and the number on the identification. The seller shall post a sign at the point of sale stating that the license or card will be scanned and stating what information will be stored. The stored information may only be used by law enforcement agencies, regulatory agencies, and the exchange for purposes of enforcement of the restrictions on the sale or purchase of methamphetamine precursors pursuant to sections 28-458 to 28-462 and may not be shared with any other person or entity. For purposes of this subsection, the terms exchange, methamphetamine precursor, and seller have the same meanings as in section 28-458.

(c) The retailer or seller shall utilize software that stores only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony.

(d) A retailer or seller who knowingly stores more information than authorized under this subsection from the operator's license or state identification card shall be guilty of a Class IV felony.

(e) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

Source: Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1; Laws 2011, LB20, § 9.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR
VEHICLES OTHER THAN COMMERCIAL

60-4,112 Sections; applicability.

Sections 60-4,114.01 and 60-4,118.01 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

Source: Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws 2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10; Laws 2011, LB158, § 2; Laws 2014, LB983, § 16.
Operative date July 8, 2015.

60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.

(1) In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate. The certificate may be presented to the county treasurer of any county within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If the department personnel refuse to issue an issuance certificate for cause, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(2) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application.

Source: Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 141, § 2, p. 447; Laws 1945, c. 142, § 1, p. 454; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1961, c. 317, § 1, p. 1016; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11; Laws 2011, LB215, § 11.

60-4,114 County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.

(1) The county treasurer may employ such additional clerical help as may be necessary to assist him or her in the performance of the ministerial duties

required of him or her under the Motor Vehicle Operator's License Act and, for such additional expense, shall be reimbursed as set out in section 60-4,115.

(2) The director may, in his or her discretion, appoint department personnel to examine all applicants who apply for an initial license or whose licenses have been revoked or canceled to ascertain such person's ability to operate a motor vehicle properly and safely.

(3) Except as otherwise provided in section 60-4,122, the application process, in addition to the other requisites of the act, shall include the following:

(a) An inquiry into the medical condition and visual ability of the applicant to operate a motor vehicle;

(b) An inquiry into the applicant's ability to drive and maneuver a motor vehicle; and

(c) An inquiry touching upon the applicant's knowledge of the motor vehicle laws of this state, which shall include sufficient questions to indicate familiarity with the provisions thereof.

(4) If an applicant is denied or refused a certificate for license, such applicant shall have the right to an immediate appeal to the director from the decision. It shall be the duty of the director to review the appeal and issue a final order, to be made not later than ten days after the receipt of the appeal by the director, except that if the director requests the advice of the Health Advisory Board on the matter, the director shall have up to forty-five days after the day a medical or vision problem is referred to him or her to consult with members of the board to obtain the medical opinion necessary to make a decision and shall issue a final order not later than ten days following receipt of the medical opinion. After consideration of the advice of the board, the director shall make a determination of the applicant's physical or mental ability to operate a motor vehicle and shall issue a final order. The order shall be in writing, shall be accompanied by findings of fact and conclusions of law, and shall be sent by regular United States mail to the applicant's last-known address. The order may be appealed as provided in section 60-4,105.

Source: Laws 1929, c. 148, § 6, p. 514; C.S.1929, § 60-406; Laws 1931, c. 101, § 1, p. 272; Laws 1937, c. 141, § 16, p. 514; C.S.Supp.,1941, § 60-406; R.S.1943, § 60-408; Laws 1945, c. 141, § 5, p. 450; Laws 1947, c. 207, § 2, p. 676; Laws 1957, c. 366, § 38, p. 1272; Laws 1961, c. 307, § 5, p. 972; Laws 1961, c. 315, § 6, p. 1003; Laws 1961, c. 316, § 6, p. 1013; Laws 1972, LB 1439, § 1; Laws 1981, LB 76, § 2; R.S.1943, (1988), § 60-408; Laws 1989, LB 285, § 63; Laws 1994, LB 211, § 9; Laws 1999, LB 704, § 16; Laws 2001, LB 38, § 28; Laws 2001, LB 574, § 10; Laws 2011, LB215, § 12; Laws 2012, LB751, § 23.

60-4,114.01 Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.

An applicant for a Class O or Class M license that fails three successive tests of his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 may be issued an LPD-learner's permit. The applicant shall not be eligible to reapply for the Class O or Class M license and retake such test until he or she presents proof of successful completion of a

department-approved driver training school or until he or she has held an LPD-learner's permit for at least ninety days.

Source: Laws 2011, LB158, § 3.

60-4,115 Fees; allocation; identity security surcharge.

(1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

| Document | Total Fee | County General Fund | Department of Motor Vehicles Cash Fund | State General Fund |
|---|-----------|---------------------|--|--------------------|
| State identification card: | | | | |
| Valid for 1 year or less | 5.00 | 2.75 | 1.25 | 1.00 |
| Valid for more than 1 year but not more than 2 years | 10.00 | 2.75 | 4.00 | 3.25 |
| Valid for more than 2 years but not more than 3 years | 14.00 | 2.75 | 5.25 | 6.00 |
| Valid for more than 3 years but not more than 4 years | 19.00 | 2.75 | 8.00 | 8.25 |
| Valid for more than 4 years for person under 21 | 24.00 | 2.75 | 10.25 | 11.00 |
| Valid for 5 years | 24.00 | 3.50 | 10.25 | 10.25 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Class O or M operator's license: | | | | |
| Valid for 1 year or less | 5.00 | 2.75 | 1.25 | 1.00 |
| Valid for more than 1 year but not more than 2 years | 10.00 | 2.75 | 4.00 | 3.25 |
| Valid for more than 2 years but not more than 3 years | 14.00 | 2.75 | 5.25 | 6.00 |
| Valid for more than 3 years but not more than 4 years | 19.00 | 2.75 | 8.00 | 8.25 |
| Valid for 5 years | 24.00 | 3.50 | 10.25 | 10.25 |
| Bioptic or telescopic lens restriction: | | | | |
| Valid for 1 year or less | 5.00 | 0 | 5.00 | 0 |
| Valid for more than 1 year but not more than 2 years | 10.00 | 2.75 | 4.00 | 3.25 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Provisional operator's permit: | | | | |
| Original | 15.00 | 2.75 | 12.25 | 0 |
| Bioptic or telescopic lens restriction: | | | | |
| Valid for 1 year or less | 5.00 | 0 | 5.00 | 0 |
| Valid for more than 1 year but not more than 2 years | 15.00 | 2.75 | 12.25 | 0 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| LPD-learner's permit: | | | | |

MOTOR VEHICLES

| Document | Total Fee | County General Fund | Department of Motor Vehicles Cash Fund | State General Fund |
|---|-----------|---------------------|--|--------------------|
| Original | 8.00 | .25 | 5.00 | 2.75 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| LPE-learner's permit: | | | | |
| Original | 8.00 | .25 | 5.00 | 2.75 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| School permit: | | | | |
| Original | 8.00 | .25 | 5.00 | 2.75 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Farm permit: | | | | |
| Original or renewal | 5.00 | .25 | 0 | 4.75 |
| Replacement | 5.00 | .25 | 0 | 4.75 |
| Temporary | 5.00 | .25 | 0 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Driving permits: | | | | |
| Employment | 45.00 | 0 | 5.00 | 40.00 |
| Medical hardship | 45.00 | 0 | 5.00 | 40.00 |
| Replacement | 10.00 | .25 | 5.00 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Commercial driver's license: | | | | |
| Valid for 1 year or less | 11.00 | 1.75 | 5.00 | 4.25 |
| Valid for more than 1 year but not more than 2 years | 22.00 | 1.75 | 5.00 | 15.25 |
| Valid for more than 2 years but not more than 3 years | 33.00 | 1.75 | 5.00 | 26.25 |
| Valid for more than 3 years but not more than 4 years | 44.00 | 1.75 | 5.00 | 37.25 |
| Valid for 5 years | 55.00 | 1.75 | 5.00 | 48.25 |
| Bioptic or telescopic lens restriction: | | | | |
| Valid for one year or less | 11.00 | 1.75 | 5.00 | 4.25 |
| Valid for more than 1 year but not more than 2 years | 22.00 | 1.75 | 5.00 | 15.25 |
| Replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 10.00 | 1.75 | 5.00 | 3.25 |
| CLP-commercial learner's permit: | | | | |
| Original or renewal | 10.00 | .25 | 5.00 | 4.75 |
| Replacement | 10.00 | .25 | 5.00 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 10.00 | .25 | 5.00 | 4.75 |
| Seasonal permit: | | | | |
| Original or renewal | 10.00 | .25 | 5.00 | 4.75 |
| Replacement | 10.00 | .25 | 5.00 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 10.00 | .25 | 5.00 | 4.75 |
| School bus permit: | | | | |
| Original or renewal | 5.00 | 0 | 5.00 | 0 |
| Replacement | 5.00 | 0 | 5.00 | 0 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |

(3) If the department issues an operator's license or a state identification card, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Ignition Interlock Fund.

(b) The fee for a replacement ignition interlock permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp., 1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12; Laws 2009, LB497, § 3; Laws 2011, LB170, § 2; Laws 2011, LB215, § 13; Laws 2011, LB667, § 28; Laws 2014, LB777, § 4; Laws 2014, LB983, § 17.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB777, section 4, with LB983, section 17, to reflect all amendments.

Note: Changes made by LB777 became effective July 18, 2014. Changes made by LB983 became operative July 8, 2015.

60-4,116 Applicant; department; duties.

Prior to the issuance of any original or renewal operator's license, the issuance of a replacement operator's license, or the reissuance of any such license with a change of any classification, endorsement, or restriction, the department shall:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial learner's permit or commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled, (c) is not eligible, or (d) is deceased.

Source: Laws 2003, LB 562, § 6; Laws 2011, LB178, § 4; Laws 2012, LB751, § 24; Laws 2014, LB777, § 5; Laws 2014, LB983, § 18.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB777, section 5, with LB983, section 18, to reflect all amendments.

Note: Changes made by LB777 became effective July 18, 2014. Changes made by LB983 became operative July 8, 2015.

60-4,117 Operator's license or state identification card; form; county treasurer; duties.

(1) Upon presentation of an issuance certificate for an operator's license or state identification card issued by department personnel to the applicant, the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(2) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

- (a) The full legal name and principal residence address of the holder;
- (b) The holder's full facial digital image;
- (c) A physical description of the holder, including gender, height, weight, and eye and hair colors;
- (d) The holder's date of birth;
- (e) The holder's signature;
- (f) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;
- (g) The issuance and expiration date of the license or card;
- (h) The organ and tissue donation information specified in section 60-494;
- (i) A notation of the word "veteran" as provided in section 60-4,189; and

(j) Such other marks and information as the director may determine.

(3) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

Source: Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13; Laws 2011, LB215, § 14; Laws 2013, LB93, § 5.

60-4,118.05 Age requirements; license issued; when.

(1) No operator's license referred to in section 60-4,118 shall, under any circumstances, be issued to any person who has not attained the age of seventeen years.

(2) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under section 60-4,118 unless such person:

(a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit; and

(b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license.

(3) The department may waive the written examination and the driving test required under section 60-4,118 for any person seventeen to twenty-one years of age applying for his or her initial operator's license if he or she has been issued a provisional operator's permit. The department shall not waive the written examination and the driving test required under this section if the person is applying for a CLP-commercial learner's permit or commercial driver's license or if the operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the provisional operator's permit.

Source: Laws 2001, LB 38, § 31; Laws 2008, LB911, § 14; Laws 2014, LB983, § 19.

Operative date July 8, 2015.

60-4,118.06 Ignition interlock permit; issued; when; operation restriction; revocation of permit by director; when.

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the department and installed an

approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under sections 60-498.01 to 60-498.04 shall be eligible for an ignition interlock permit as provided in such sections. The director shall issue an ignition interlock permit only for the operation of a motor vehicle equipped with an ignition interlock device. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3)(a) An ignition interlock permit shall not be issued under this section or sections 60-498.01 to 60-498.04 to any person except in cases of a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06.

(b) An ignition interlock permit shall only be available to a holder of a Class M or O operator's license.

(4) The director shall revoke a person's ignition interlock permit issued under this section or sections 60-498.01 to 60-498.04 upon receipt of an (a) abstract of conviction indicating that the person had his or her operating privileges revoked or canceled or (b) administrative order revoking or canceling the person's operating privileges, if such conviction or order resulted from an incident other than the incident which resulted in the application for the ignition interlock permit.

Source: Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5; Laws 2009, LB497, § 4; Laws 2010, LB924, § 2; Laws 2011, LB667, § 29; Laws 2012, LB751, § 25; Laws 2013, LB158, § 2.

60-4,119 Operators' licenses; state identification cards; digital image and digital signature; exception; procedure.

(1) All state identification cards and operators' licenses, except farm permits, shall include a digital image and a digital signature of the cardholder or licensee as provided in section 60-484.02. Receipts for state identification cards and operators' licenses shall be issued by the county treasurer or the Department of Motor Vehicles. The director shall negotiate and enter into a contract to provide the necessary equipment, supplies, and forms for the issuance of the licenses and cards. All costs incurred by the Department of Motor Vehicles under this section shall be paid by the state out of appropriations made to the department. All costs of capturing the digital images and digital signatures shall be paid by the issuer from the fees provided to the issuer pursuant to section 60-4,115.

(2) A person who is out of the state at the time of renewal of his or her operator's license may apply for a license upon payment of a fee as provided in section 60-4,115. The license may be issued at any time within one year after

the expiration of the original license. Such application shall be made to the department, and the department shall issue the license.

(3) Any operator's license and any state identification card issued to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the operator's license or state identification card of a person who is not a minor.

Source: Laws 1977, LB 90, § 1; Laws 1978, LB 574, § 3; Laws 1981, LB 46, § 1; Laws 1982, LB 877, § 1; Laws 1984, LB 811, § 3; Laws 1986, LB 575, § 1; Laws 1989, LB 284, § 4; R.S.1943, (1988), § 60-406.04; Laws 1989, LB 285, § 69; Laws 1990, LB 980, § 9; Laws 1993, LB 201, § 1; Laws 1995, LB 467, § 13; Laws 1999, LB 704, § 19; Laws 2001, LB 574, § 13; Laws 2005, LB 1, § 6; Laws 2010, LB861, § 80; Laws 2014, LB777, § 6.
Effective date July 18, 2014.

60-4,120 Operator's license; state identification card; replacement.

(1) Any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may make application to the department for a replacement license or card.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the department for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the department for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address.

(3) In the event a mutilated or unreadable operator's license is held by any person duly licensed under the act or a mutilated or unreadable state identification card which was issued under the act is held by a person, such person may obtain a replacement license or card. Upon report of the mutilated or unreadable license or card and application for a replacement license or card, a replacement license or card may be issued if the department is satisfied that the original license or card is mutilated or unreadable.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may make application to the department for a replacement operator's license or card by applying to the department and reporting such loss. Upon receipt of a correctly completed application, the department shall cause to be issued a replacement operator's license or card.

(5) Any person who holds a valid operator's license or state identification card without a digital image shall surrender such license or card to the department within thirty days after resuming residency in this state. After the thirty-day period, such license or card shall be considered invalid and no license or card shall be issued until the individual has made application for replacement or renewal.

(6) Application for a replacement operator's license or state identification card shall include the information required under sections 60-484 and 60-484.04.

(7) An applicant may obtain a replacement operator's license or state identification card pursuant to subsection (1) or (3) of this section by electronic means in a manner prescribed by the department. No replacement license or card shall be issued unless the applicant has a digital image and digital signature preserved in the digital system.

(8) Each replacement operator's license or state identification card shall be issued with the same expiration date as the license or card for which the replacement is issued. The replacement license or card shall also state the new issuance date. Upon issuance of any replacement license or card, the license or card for which the replacement is issued shall be void.

(9) A replacement operator's license or state identification card issued under this section shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer or department collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

Source: Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 126, § 1; Laws 1993, LB 201, § 2; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7; Laws 2011, LB215, § 15; Laws 2012, LB751, § 26; Laws 2014, LB777, § 7.
Effective date July 18, 2014.

60-4,120.02 Provisional operator's permit; violations; revocation; not eligible for ignition interlock permit.

(1) Any person convicted of violating a provisional operator's permit issued pursuant to section 60-4,120.01 by operating a motor vehicle in violation of subsection (3) of such section shall be guilty of an infraction and may have his or her provisional operator's permit revoked by the court pursuant to section 60-496 for a time period specified by the court. Before such person applies for another provisional operator's permit, he or she shall pay a reinstatement fee as provided in section 60-499.01 after the period of revocation has expired.

(2) A copy of an abstract of the court's conviction, including an adjudication, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(3) Any person who holds a provisional operator's permit and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

(4) For purposes of this section, conviction includes any adjudication of a juvenile.

Source: Laws 1998, LB 320, § 8; Laws 1999, LB 704, § 21; Laws 2001, LB 38, § 33; Laws 2012, LB751, § 27.

60-4,121 Military service; renewal of operator's license; period valid.

(1) The operator's license of any person serving on active duty, other than members of the National Guard or reserves activated for training purposes only, outside the State of Nebraska as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be valid during such person's period of active duty and for not more than sixty days immediately following such person's date of separation from service.

(2) Each individual who is applying for renewal of his or her operator's license shall submit his or her previous license to the department personnel or, when the previous license is unavailable, furnish proof of identification in accordance with section 60-484.

Source: Laws 1929, c. 148, § 8, p. 516; C.S.1929, § 60-408; Laws 1937, c. 141, § 18, p. 515; C.S.Supp.,1941, § 60-408; R.S.1943, § 60-411; Laws 1945, c. 141, § 7, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 8, p. 1004; Laws 1961, c. 316, § 8, p. 1014; Laws 1967, c. 389, § 2, p. 1213; Laws 1967, c. 234, § 5, p. 625; Laws 1971, LB 244, § 1; Laws 1982, LB 877, § 2; Laws 1984, LB 811, § 5; Laws 1985, LB 240, § 1; Laws 1989, LB 284, § 7; R.S.1943, (1988), § 60-411; Laws 1989, LB 285, § 71; Laws 1996, LB 974, § 2; Laws 1997, LB 22, § 1; Laws 1999, LB 704, § 22; Laws 2011, LB215, § 16.

60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers.

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not impounded, suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which

has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181 and the information and documentation required by section 60-484.04.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she surrenders to the department his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8)(a) A qualified licensee as determined by the department who is twenty-one years of age or older, whose license expires prior to his or her seventy-second birthday, and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license, if his or her driving record abstract maintained in the records of the department shows that such person's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible. Every licensee, including a licensee who is out of the state at the time of renewal, must apply for renewal in person at least once every ten years and have a new digital image and digital signature captured.

(b) In order to allow for an orderly progression through the various types of operators' licenses issued to persons under twenty-one years of age, a qualified holder of an operator's license who is under twenty-one years of age and who has a digital image and digital signature preserved in the digital system may apply for an operator's license by electronic means in a manner prescribed by the department using the preserved digital image and digital signature if the applicant has passed any required examinations prior to application, if his or her driving record abstract maintained in the records of the department shows that such person's operator's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every holder of a state identification card shall

apply for renewal in person at least once every ten years and have a new digital image and digital signature captured.

(10) In addition to services available at driver license offices, the department may develop requirements for using electronic means for online issuance of operators' licenses and state identification cards to qualified holders as determined by the department.

Source: Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 369, § 16; Laws 1990, LB 742, § 4; Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16; Laws 2011, LB158, § 4; Laws 2011, LB215, § 17; Laws 2014, LB777, § 8. Effective date July 18, 2014.

60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty; not eligible for ignition interlock permit.

(1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued a school permit if such person lives a distance of one and one-half miles or more from the school he or she attends and either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has demonstrated that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an issuance certificate authorizing the county treasurer to issue a school permit. In order to obtain an issuance certificate, the applicant shall present (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. The department may waive the written examination if the applicant has been issued an LPE-learner's permit or LPD-learner's permit and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle:

(a) To and from where he or she attends school and between schools of enrollment over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family

member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or another state and shall actually occupy the seat beside the permitholder or, in the case of a motorcycle or moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if he or she has seated next to him or her a person who is a licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(7) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6; Laws 2008, LB911, § 18; Laws 2012, LB751, § 28.

60-4,125 LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license; not eligible for ignition interlock permit.

(1) For any minor convicted or adjudicated of violating the terms of an LPD-learner's permit issued pursuant to section 60-4,123 or an LPE-learner's permit issued pursuant to section 60-4,124, the court shall, in addition to any other penalty or disposition, order the impoundment or revocation of such learner's permit and order that such minor shall not be eligible for another operator's license or school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(2) Any person who holds an LPD-learner's permit issued pursuant to section 60-4,123 and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

(3) A copy of the court's abstract or adjudication shall be transmitted to the director who shall place in an impound status or revoke the LPD-learner's or LPE-learner's permit of such minor in accordance with the order of the court and not again issue another operator's license or school, farm, LPD-learner's, or LPE-learner's permit to such minor until such minor has attained the age of sixteen years.

Source: Laws 1963, c. 359, § 7, p. 1153; R.S.1943, (1988), § 60-409.05; Laws 1989, LB 285, § 75; Laws 1991, LB 420, § 13; Laws 1998, LB 320, § 12; Laws 2001, LB 38, § 34; Laws 2004, LB 353, § 1; Laws 2012, LB751, § 29.

60-4,126 Farm permit; issuance; violations; penalty; not eligible for ignition interlock permit.

(1) Any person who is younger than sixteen years of age but is over thirteen years of age and resides upon a farm in this state or is fourteen years of age or older and is employed for compensation upon a farm in this state may obtain a farm permit authorizing the operation of farm tractors, minitrucks, and other motorized implements of farm husbandry upon the highways of this state if the applicant for such farm permit furnishes satisfactory proof of age and satisfactorily demonstrates that he or she has knowledge of the operation of such equipment and of the rules of the road and laws respecting the operation of motor vehicles upon the highways of this state. Any person under sixteen years of age but not less than thirteen years of age may obtain a temporary permit to operate such equipment for a six-month period after presentation to the department of a request for the temporary permit signed by the person's parent or guardian and payment of the fee and surcharge prescribed in section 60-4,115. After the expiration of the six-month period, it shall be unlawful for such person to operate such equipment upon the highways of this state unless he or she has been issued a farm permit under this section. The fee for an original, renewal, or replacement farm permit shall be the fee and surcharge prescribed in section 60-4,115. All farm permits shall be subject to revocation under the terms of section 60-496. Any person who violates the terms of a farm permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(2) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 1989, LB 285, § 76; Laws 1993, LB 491, § 13; Laws 1998, LB 320, § 13; Laws 2001, LB 574, § 19; Laws 2008, LB911, § 19; Laws 2010, LB650, § 31; Laws 2012, LB751, § 30; Laws 2014, LB777, § 9.
Effective date July 18, 2014.

60-4,127 Motorcycle operation; Class M license required; issuance; examination.

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding twenty-four months.

(2) Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the issuance certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

Source: Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 328, § 2; Laws 1974, LB 821, § 13; Laws 1977, LB 90, § 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20; Laws 2011, LB170, § 3; Laws 2011, LB215, § 18.

Cross References

Motorcycle Safety Education Act, see section 60-2120.

60-4,129 Employment driving permit; issuance; conditions; violations; penalty; revocation.

(1) Any person whose operator's license is revoked under section 60-4,183 or 60-4,186 or suspended under section 43-3318 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under an employment driving permit. An employment driving permit issued due to a revocation under section 60-4,183 or 60-4,186 is valid for the period of revocation. An employment driving permit issued due to a suspension of an operator's license under section 43-3318 is valid for no more than three months and cannot be renewed.

(2) Any person whose operator's license has been suspended or revoked pursuant to any law of this state, except section 43-3318, 60-4,183, or 60-4,186, shall not be eligible to receive an employment driving permit during the period of such suspension or revocation.

(3) A person who is issued an employment driving permit may operate any motor vehicle, except a commercial motor vehicle, (a) from his or her residence to his or her place of employment and return and (b) during the normal course of employment if the use of a motor vehicle is necessary in the course of such employment. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of an employment driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke a person's employment driving permit upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such employment driving permit, indicating that the person committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the person shall not be eligible to receive an employment driving permit for the remainder of the period of suspension or revocation of his or her operator's license.

Source: Laws 1975, LB 259, § 5; Laws 1977, LB 41, § 15; Laws 1982, LB 568, § 8; Laws 1986, LB 779, § 1; R.S.1943, (1988), § 39-669.34; Laws 1989, LB 285, § 79; Laws 1992, LB 291, § 16; Laws 1993, LB 370, § 89; Laws 1997, LB 752, § 140; Laws 2003, LB 209, § 10; Laws 2010, LB805, § 6; Laws 2011, LB667, § 30; Laws 2011, LB675, § 3.

60-4,130.03 Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.

(1) Any person less than twenty-one years of age who holds an operator's license or a provisional operator's permit and who has accumulated, within any twelve-month period, a total of six or more points on his or her driving record pursuant to section 60-4,182 shall be notified by the Department of Motor Vehicles of that fact and ordered to attend and successfully complete a driver improvement course consisting of at least eight hours of department-approved instruction. Notice shall be sent by regular United States mail to the last-known address as shown in the records of the department. If such person fails to complete the driver improvement course within three months after the date of notification, he or she shall have his or her operator's license suspended by the department.

(2) The director shall issue an order summarily suspending an operator's license until the licensee turns twenty-one years of age. Such order shall be sent by regular United States mail to the last-known address as shown in the records of the department. Such person shall not have his or her operator's license reinstated until he or she (a) has successfully completed the driver improve-

ment course or has attained the age of twenty-one years and (b) has complied with section 60-4,100.01.

Source: Laws 1998, LB 320, § 14; Laws 2001, LB 38, § 35; Laws 2012, LB751, § 31.

(h) PROVISIONS APPLICABLE TO OPERATION
OF COMMERCIAL MOTOR VEHICLES

60-4,131 Sections; applicability; terms, defined.

(1)(a) This subsection applies until July 8, 2015. Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(b) For purposes of such sections:

(i) Disqualification means:

(A) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to operate a commercial motor vehicle;

(B) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. part 386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. part 391; or

(C) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(ii) Downgrade means the state:

(A) Allows the driver of a commercial motor vehicle to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 C.F.R. part 391, as provided in 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3;

(B) Allows the driver of a commercial motor vehicle to change his or her self-certification to intrastate only, if the driver qualifies under a state's physical qualification requirements for intrastate only;

(C) Allows the driver of a commercial motor vehicle to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of a state driver qualification requirement; or

(D) Removes the commercial driver's license privilege from the operator's license;

(iii) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(iv) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(v) Endorsement means an authorization to an individual's commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(vi) Medical examiner means for medical examinations conducted on and after May 21, 2014, an individual certified by the Federal Motor Carrier Safety Administration and listed on the National Registry of Certified Medical Examiners in accordance with 49 C.F.R. part 390, subpart D;

(vii) Medical examiner's certificate means a form meeting the requirements of 49 C.F.R. 391.43 issued by a medical examiner in compliance with such regulation;

(viii) Medical variance means the Federal Motor Carrier Safety Administration has provided a driver with either an exemption letter permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 381, subpart C, or 49 C.F.R. 391.64 or a Skill Performance Evaluation Certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 391.49;

(ix) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(x) State means a state of the United States and the District of Columbia;

(xi) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(xii) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicle includes, but is not limited to, a cargo tank and a portable tank, as defined in 49 C.F.R. part 171. However, this definition does not include a portable tank that has a rated capacity under one thousand gallons;

(xiii) United States means the fifty states and the District of Columbia; and

(xiv) Vehicle group means a class or type of vehicle with certain operating characteristics.

(2)(a) This subsection applies beginning July 8, 2015. Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(b) For purposes of such sections:

(i) Disqualification means:

(A) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to operate a commercial motor vehicle;

(B) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. part 386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. part 391; or

(C) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(ii) Downgrade means the state:

(A) Allows the driver of a commercial motor vehicle to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 C.F.R. part 391, as provided in 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3;

(B) Allows the driver of a commercial motor vehicle to change his or her self-certification to intrastate only, if the driver qualifies under a state's physical qualification requirements for intrastate only;

(C) Allows the driver of a commercial motor vehicle to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of a state driver qualification requirement; or

(D) Removes the commercial driver's license privilege from the operator's license;

(iii) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(iv) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(v) Endorsement means an authorization to an individual's CLP-commercial learner's permit or commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(vi) Foreign means outside the fifty United States and the District of Columbia;

(vii) Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment;

(viii) Issue and issuance means initial issuance, transfer, renewal, or upgrade of a CLP-commercial learner's permit, commercial driver's license, nondomiciled CLP-commercial learner's permit, or nondomiciled commercial driver's license, as described in 49 C.F.R. 383.73;

(ix) Medical examiner means an individual certified by the Federal Motor Carrier Safety Administration and listed on the National Registry of Certified Medical Examiners in accordance with 49 C.F.R. part 390, subpart D;

(x) Medical examiner's certificate means a form meeting the requirements of 49 C.F.R. 391.43 issued by a medical examiner in compliance with such regulation;

(xi) Medical variance means the Federal Motor Carrier Safety Administration has provided a driver with either an exemption letter permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 381, subpart C, or 49 C.F.R. 391.64 or a Skill Performance Evaluation Certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 391.49;

(xii) Nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license means a CLP-commercial learner's permit or commercial driver's license, respectively, issued by this state or other jurisdiction under either of the following two conditions:

(A) To an individual domiciled in a foreign country meeting the requirements of 49 C.F.R. 383.23(b)(1); and

(B) To an individual domiciled in another state meeting the requirements of 49 C.F.R. 383.23(b)(2);

(xiii) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(xiv) State means a state of the United States and the District of Columbia;

(xv) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(xvi) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks that have an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more and that are either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle;

(xvii) Third-party skills test examiner means a person employed by a third-party tester who is authorized by this state to administer the commercial driver's license skills tests specified in 49 C.F.R. part 383, subparts G and H;

(xviii) Third-party tester means a person, including, but not limited to, another state, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government, authorized by this state to employ skills test examiners to administer the commercial driver's license skills tests specified in 49 C.F.R. part 383, subparts G and H;

(xix) United States means the fifty states and the District of Columbia; and

(xx) Vehicle group means a class or type of vehicle with certain operating characteristics.

Source: Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7; Laws 2011, LB178, § 5; Laws 2014, LB983, § 20.

Operative date March 29, 2014.

60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:

- (1) Active duty military personnel;
- (2) Members of the military reserves, other than military technicians;
- (3) Active duty United States Coast Guard personnel; and
- (4) Members of the National Guard on active duty, including:
 - (a) Personnel on full-time National Guard duty;
 - (b) Personnel on part-time National Guard training; and

(c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

Source: Laws 2006, LB 853, § 13; Laws 2011, LB178, § 6; Laws 2014, LB983, § 21.

Operative date March 29, 2014.

60-4,132 Purposes of sections.

The purposes of sections 60-462.01 and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Source: Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8; Laws 2011, LB178, § 7; Laws 2014, LB983, § 22.

Operative date March 29, 2014.

60-4,137 Operation of commercial motor vehicle; valid commercial driver's license or valid CLP-commercial learner's permit required.

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a valid commercial driver's license or a valid CLP-commercial learner's permit issued pursuant to the Motor Vehicle Operator's License Act.

Source: Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9; Laws 2011, LB178, § 8; Laws 2014, LB983, § 23.

Operative date July 8, 2015.

60-4,138 Commercial drivers' licenses and restricted commercial drivers' licenses; classification.

(1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the department in compliance with 49 C.F.R. parts 383 and 391, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six

thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) E — No manual transmission equipped commercial motor vehicle;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A bus;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus;

(f) O — No tractor-trailer commercial motor vehicle;

(g) V — Operation of a commercial motor vehicle for drivers with medical variance documentation. The documentation shall be required to be carried on the driver's person while operating a commercial motor vehicle; and

(h) Z — No full air brake equipped commercial motor vehicle.

Source: Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6; Laws 2011, LB178, § 9; Laws 2014, LB983, § 24.

Operative date July 8, 2015.

60-4,139 Commercial motor vehicle; nonresident; operating privilege.

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or a valid commercial learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in

accord with 49 C.F.R. parts 383 and 391, (2) the license or permit is not suspended, revoked, or canceled, (3) such nonresident is not disqualified from operating a commercial motor vehicle, and (4) the commercial motor vehicle is not operated in violation of any downgrade.

Source: Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10; Laws 2011, LB178, § 10; Laws 2014, LB983, § 25. Operative date July 8, 2015.

60-4,141 Operation outside classification of license; restrictions; violation; penalty.

(1) Except as provided in subsections (2), (3), and (4) of this section, no person shall operate any class of commercial motor vehicle upon the highways of this state unless such person possesses a valid commercial driver's license authorizing the operation of the class of commercial motor vehicle being operated, except that (a) any person possessing a valid commercial driver's license authorizing the operation of a Class A commercial motor vehicle may lawfully operate any Class B or C commercial motor vehicle and (b) any person possessing a valid commercial driver's license authorizing the operation of a Class B commercial motor vehicle may lawfully operate a Class C commercial motor vehicle. No person shall operate upon the highways of this state any commercial motor vehicle which requires a specific endorsement unless such person possesses a valid commercial driver's license with such endorsement. No person possessing a restricted commercial driver's license shall operate upon the highways of this state any commercial motor vehicle to which such restriction is applicable.

(2)(a) Any person holding a CLP-commercial learner's permit may operate a commercial motor vehicle for learning purposes upon the highways of this state if accompanied by a person who is twenty-one years of age or older, who holds a commercial driver's license valid for the class of commercial motor vehicle being operated, and who occupies the seat beside the person for the purpose of giving instruction in the operation of the commercial motor vehicle. Any person holding a CLP-commercial learner's permit may operate a commercial motor vehicle upon the highways of this state for purposes of taking a driving skills examination if accompanied by licensing staff who is designated by the director under section 60-4,149 or an examiner employed by a third-party tester certified pursuant to section 60-4,158 and who occupies the seat beside the person for the purpose of giving the examination. A person holding a CLP-commercial learner's permit shall not operate a commercial motor vehicle transporting hazardous materials. A holder of a commercial learner's permit may operate a Class A combination vehicle, Class B heavy straight vehicle, or Class C small vehicle, as appropriate.

(b) A CLP-commercial learner's permit shall only be allowed to bear any of the following endorsements: (i) P — Passenger; (ii) S — School bus; and (iii) N — Tank vehicle.

(c) A CLP-commercial learner's permit shall only be allowed to bear any of the following restrictions: (i) K — Operation of a commercial motor vehicle only in intrastate commerce; (ii) L — Operation of only a commercial motor vehicle which is not equipped with air brakes; (iii) V — Operation of a commercial motor vehicle for drivers with medical variance documentation;

(iv) P — No passengers in commercial motor vehicle bus; and (v) X — No cargo in commercial motor vehicle tank vehicle.

(3) Except for nonresident individuals who are enrolled and taking training in a driver training school in this state, any holder of a nonresident commercial learner's permit or nonresident commercial driver's license who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued CLP-commercial learner's permit or commercial driver's license and shall surrender to the department any operator's license issued to such nonresident by any other state.

(4) Except for individuals who are enrolled and taking training in a driver training school in this state, any holder of a nondomiciled commercial learner's permit or nondomiciled commercial driver's license issued by another state who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued CLP-commercial learner's permit or commercial driver's license and shall surrender to the department any operator's license issued to such individual by any other state.

(5) An operator's license surrendered pursuant to this section may be returned to the driver after the license has been perforated with the word "VOID".

(6) Any person who operates a commercial motor vehicle upon the highways of this state in violation of this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 91; Laws 1990, LB 980, § 15; Laws 1993, LB 7, § 4; Laws 1999, LB 704, § 28; Laws 2005, LB 76, § 10; Laws 2014, LB983, § 26.
Operative date July 8, 2015.

60-4,142 CLP-commercial learner's permit issuance.

Any resident or nondomiciled applicant may obtain a CLP-commercial learner's permit from the department by making application to licensing staff of the department. An applicant shall present proof to licensing staff that he or she holds a valid Class O license or commercial driver's license or a foreign nondomiciled applicant shall successfully complete the requirements for the Class O license before a CLP-commercial learner's permit is issued. An applicant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155 and examinations for all previously issued endorsements as provided in 49 C.F.R. 383.25(a)(3) and 49 C.F.R. 383.153(b)(2)(vii). Upon application, the examination may be waived if the applicant presents a Nebraska commercial driver's license which is valid or has been expired for less than one year, presents a valid commercial driver's license from another state, or is renewing a CLP-commercial learner's permit. The CLP-commercial learner's permit shall be valid for a period of one hundred eighty days and shall be renewed only once within any two-year period. The successful applicant shall pay the fee prescribed in section 60-4,115 for the issuance or renewal of a CLP-commercial learner's permit.

Source: Laws 1989, LB 285, § 92; Laws 1990, LB 980, § 17; Laws 1998, LB 320, § 17; Laws 2001, LB 108, § 3; Laws 2001, LB 574, § 23; Laws 2003, LB 562, § 13; Laws 2006, LB 853, § 11; Laws 2012, LB751, § 32; Laws 2014, LB983, § 27.
Operative date July 8, 2015.

60-4,143 Commercial driver's license; CLP-commercial learner's permit; issuance; restriction; surrender of other licenses.

(1) No commercial driver's license or CLP-commercial learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or CLP-commercial learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state, while the person's operator's license is suspended, revoked, or canceled in this or any other state, or when the Commercial Driver License Information System indicates "not-certified".

(3) The department shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be destroyed, and the director shall send notice to the other state that the operator's license has been surrendered.

Source: Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11; Laws 2011, LB178, § 11; Laws 2014, LB983, § 28.
Operative date July 8, 2015.

60-4,144 Commercial drivers' licenses; applications; contents; application; demonstration of knowledge and skills; information and documentation required; verification.

(1) An applicant for issuance of any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and section 60-4,144.01. Such information and documentation shall include any additional information required by 49 C.F.R. parts 383 and 391 and also include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate; and

(b) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

(2)(a) Before being issued a CLP-commercial learner's permit or commercial driver's license, the applicant shall provide (i) his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, (ii) two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, except that a nondomiciled applicant for a CLP-commercial learner's permit or nondomiciled commercial driver's license holder does not have to provide proof of residence in Nebraska, (iii) evidence of identity as required by this section, and (iv) a brief physical description of himself or herself.

(b) The applicant's social security number shall not be printed on the CLP-commercial learner's permit or commercial driver's license and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with

the certification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(c) No person shall be a holder of a CLP-commercial learner's permit or commercial driver's license and a state identification card at the same time.

(3) Before being issued a CLP-commercial learner's permit or commercial driver's license, an applicant, except a nondomiciled applicant, shall provide proof that this state is his or her state of residence. Acceptable proof of residence is a document with the person's name and residential address within this state.

(4)(a) Before being issued a CLP-commercial learner's permit or commercial driver's license, an applicant shall provide proof of identity.

(b) The following are acceptable as proof of identity:

(i) A valid, unexpired United States passport;

(ii) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth;

(iii) A Consular Report of Birth Abroad issued by the United States Department of State;

(iv) A valid, unexpired permanent resident card issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services;

(v) An unexpired employment authorization document issued by the United States Department of Homeland Security;

(vi) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved form documenting the applicant's most recent admittance into the United States;

(vii) A Certificate of Naturalization issued by the United States Department of Homeland Security;

(viii) A Certificate of Citizenship issued by the United States Department of Homeland Security;

(ix) A driver's license or identification card issued in compliance with the standards established by the REAL ID Act of 2005, Public Law 109-13, division B, section 1, 119 Stat. 302; or

(x) Such other documents as the director may approve.

(c) If an applicant presents one of the documents listed under subdivision (b)(i), (ii), (iii), (iv), (vii), or (viii) of this subsection, the verification of the applicant's identity will also provide satisfactory evidence of lawful status.

(d) If the applicant presents one of the identity documents listed under subdivision (b)(v), (vi), or (ix) of this subsection, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subdivision (4)(b) of this section, a document from subsection (5) of this section, or documentation issued by the United States Department of Homeland Security or other federal

agencies demonstrating lawful status as determined by the United States Citizenship and Immigration Services.

(e) An applicant may present other documents as designated by the director as proof of identity. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(5)(a) Whenever a person is renewing, replacing, upgrading, transferring, or applying as a nondomiciled individual to this state for a CLP-commercial learner's permit or commercial driver's license, the Department of Motor Vehicles shall verify the citizenship in the United States of the person or the lawful status in the United States of the person.

(b) The following are acceptable as proof of citizenship or lawful status:

(i) A valid, unexpired United States passport;

(ii) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(iii) A Consular Report of Birth Abroad issued by the United States Department of State;

(iv) A Certificate of Naturalization issued by the United States Department of Homeland Security;

(v) A Certificate of Citizenship issued by the United States Department of Homeland Security; or

(vi) A valid, unexpired Permanent Resident Card issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services.

(6) An applicant may present other documents as designated by the director as proof of lawful status. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(7)(a) An applicant shall obtain a nondomiciled CLP-commercial driver's license or nondomiciled CLP-commercial learner's permit:

(i) If the applicant is domiciled in a foreign jurisdiction and the Federal Motor Carrier Safety Administrator has not determined that the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of 49 C.F.R. part 383; or

(ii) If the applicant is domiciled in a state that is prohibited from issuing commercial learners' permits and commercial drivers' licenses in accordance with 49 C.F.R. 384.405. Such person is eligible to obtain a nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license from Nebraska that complies with the testing and licensing standards contained in subparts F, G, and H of 49 C.F.R. part 383.

(b) An applicant for a nondomiciled CLP-commercial learner's permit and nondomiciled commercial driver's license must do the following:

(i) Complete the requirements to obtain a CLP-commercial learner's permit or a commercial driver's license under the Motor Vehicle Operator's License Act, except that an applicant domiciled in a foreign jurisdiction must provide an unexpired employment authorization document issued by the United States Citizenship and Immigration Services or an unexpired foreign passport accom-

panied by an approved I-94 form documenting the applicant's most recent admittance into the United States. No proof of domicile is required;

(ii) After receipt of the nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license and, for as long as the permit or license is valid, notify the Department of Motor Vehicles of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his or her driving privileges. Such adverse actions include, but are not limited to, license disqualification or disqualification from operating a commercial motor vehicle for the convictions described in 49 C.F.R. 383.51. Notifications must be made within the time periods specified in 49 C.F.R. 383.33; and

(iii) Provide a mailing address to the Department of Motor Vehicles. If the applicant is applying for a foreign nondomiciled CLP-commercial learner's permit or foreign nondomiciled commercial driver's license, he or she must provide a Nebraska mailing address and his or her employer's mailing address to the Department of Motor Vehicles.

(c) An applicant for a nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license is not required to surrender his or her foreign license.

(8) Any person applying for a CLP-commercial learner's permit or commercial driver's license may answer the following:

(a) Do you wish to register to vote as part of this application process?

(b) Do you wish to have the word "veteran" displayed on the front of your operator's license to show that you served in the armed forces of the United States? (To be eligible you must register with the Nebraska Department of Veterans' Affairs registry.)

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(c) Do you wish to be an organ and tissue donor?

(d) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(e) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(9) Any person applying for a CLP-commercial learner's permit or commercial driver's license must make one of the certifications in section 60-4,144.01 and any certification required under section 60-4,146 and must provide such certifications to the Department of Motor Vehicles in order to be issued a CLP-commercial learner's permit or a commercial driver's license.

(10) Every person who holds any commercial driver's license must provide to the department medical certification as required by section 60-4,144.01. The department may provide notice and prescribe medical certification compliance requirements for all holders of commercial drivers' licenses. Holders of commercial drivers' licenses who fail to meet the prescribed medical certification compliance requirements may be subject to downgrade.

Source: Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB

76, § 12; Laws 2008, LB911, § 21; Laws 2011, LB178, § 12; Laws 2011, LB215, § 19; Laws 2012, LB751, § 33; Laws 2014, LB983, § 29.

Operative date July 8, 2015.

Cross References

Address Confidentiality Act, see section 42-1201.

Donor Registry of Nebraska, see section 71-4822.

Nebraska Department of Veterans' Affairs registry, see section 80-414.

60-4,144.01 Commercial drivers' licenses; certification required; medical examiner's certificate.

(1) This subsection applies until July 8, 2015. Certification shall be made as follows:

(a) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. part 391, and is required to obtain a medical examiner's certificate by 49 C.F.R. 391.45. Beginning May 21, 2014, the medical examination required in order to obtain a medical examiner's certificate shall be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners. Any nonexcepted holder of a commercial driver's license who certifies that he or she will operate a commercial motor vehicle in nonexcepted, interstate commerce must maintain a current medical examiner's certificate and provide a copy of it to the department in order to maintain his or her medical certification status;

(b) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3 from all or part of the qualification requirements of 49 C.F.R. part 391, and is therefor not required to obtain a medical examiner's certificate by 49 C.F.R. 391.45;

(c) A person must certify that he or she operates a commercial motor vehicle only in intrastate commerce and therefor is subject to state driver qualification requirements as provided in section 75-363; or

(d) A person must certify that he or she operates a commercial motor vehicle in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(2) This subsection applies beginning July 8, 2015. Certification shall be made as follows:

(a) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. part 391, and is required to obtain a medical examiner's certificate by 49 C.F.R. 391.45. Beginning May 21, 2014, the medical examination required in order to obtain a medical examiner's certificate shall be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners. Any nonexcepted holder of a commercial learner's permit or commercial driver's license who certifies that he or she will operate a commercial motor vehicle in nonexcepted, interstate commerce must maintain a current medical examiner's certificate and provide a copy of it to the department in order to maintain his or her medical certification status;

(b) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3 from all or part of the qualification requirements of 49 C.F.R. part 391, and is therefor not required to obtain a medical examiner's certificate by 49 C.F.R. 391.45;

(c) A person must certify that he or she operates a commercial motor vehicle only in intrastate commerce and therefor is subject to state driver qualification requirements as provided in section 75-363; or

(d) A person must certify that he or she operates a commercial motor vehicle in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

Source: Laws 2011, LB178, § 13; Laws 2014, LB983, § 30.

Operative date March 29, 2014.

60-4,144.02 Commercial drivers' licenses; CLP-commercial learner's permit; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.

(1)(a) This subsection applies until July 8, 2015. For each operator of a commercial motor vehicle required to have a commercial driver's license, the department, in compliance with 49 C.F.R. 383.73, shall:

(i) Post the driver's self-certification of type of driving under 49 C.F.R. 383.71(a)(1)(ii);

(ii) Retain the medical examiner's certificate of any driver required to provide documentation of physical qualification for three years beyond the date the certificate was issued; and

(iii) Post the information from the medical examiner's certificate within ten calendar days to the Commercial Driver License Information System driver record, including:

(A) The medical examiner's name;

(B) The medical examiner's telephone number;

(C) The date of the medical examiner's certificate issuance;

(D) The medical examiner's license number and the state that issued it;

(E) The medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of the medical certification status, either "certified" or "not-certified";

(G) The expiration date of the medical examiner's certificate;

(H) The existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions, for example, corrective lenses, hearing aid, or required to have possession of an exemption letter or Skill Performance Evaluation certificate while on duty; and

(J) The date the medical examiner's certificate information was posted to the Commercial Driver License Information System driver record.

(b) The department shall, within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified".

(c) Within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the department shall update the Commercial Driver License Information System driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(d)(i) If a driver's medical certification or medical variance expires, or the Federal Motor Carrier Safety Administration notifies the department that a medical variance was removed or rescinded, the department shall:

(A) Notify the commercial driver's license holder of his or her commercial driver's license "not-certified" medical certification status and that the commercial driver's license privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance or changes his or her self-certification to driving only in excepted or intrastate commerce, if permitted by the department; and

(B) Initiate established department procedures for downgrading the license. The commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(ii) If a driver fails to provide the department with the certification contained in 49 C.F.R. 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 49 C.F.R. 383.71(a)(1)(ii)(A) that he or she is operating in nonexcepted interstate commerce as required by 49 C.F.R. 383.71(h), the department shall mark that Commercial Driver License Information System driver record as "not-certified" and initiate a commercial driver's license downgrade following department procedures in accordance with subdivision (1)(d)(i)(B) of this section.

(2)(a) This subsection applies beginning July 8, 2015. For each operator of a commercial motor vehicle required to have a commercial driver's license or CLP-commercial learner's permit, the department, in compliance with 49 C.F.R. 383.73, shall:

(i) Post the driver's self-certification of type of driving under 49 C.F.R. 383.71(a)(1)(ii);

(ii) Retain the medical examiner's certificate of any driver required to provide documentation of physical qualification for three years beyond the date the certificate was issued; and

(iii) Post the information from the medical examiner's certificate within ten calendar days to the Commercial Driver License Information System driver record, including:

(A) The medical examiner's name;

(B) The medical examiner's telephone number;

(C) The date of the medical examiner's certificate issuance;

(D) The medical examiner's license number and the state that issued it;

(E) The medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of the medical certification status, either “certified” or “not-certified”;

(G) The expiration date of the medical examiner’s certificate;

(H) The existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions, for example, corrective lenses, hearing aid, or required to have possession of an exemption letter or Skill Performance Evaluation certificate while on duty; and

(J) The date the medical examiner’s certificate information was posted to the Commercial Driver License Information System driver record.

(b) The department shall, within ten calendar days of the driver’s medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as “not-certified”.

(c) Within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the department shall update the Commercial Driver License Information System driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(d)(i) If a driver’s medical certification or medical variance expires, or the Federal Motor Carrier Safety Administration notifies the department that a medical variance was removed or rescinded, the department shall:

(A) Notify the holder of the commercial driver’s license or CLP-commercial learner’s permit of his or her “not-certified” medical certification status and that the CLP-commercial learner’s permit or commercial driver’s license privilege will be removed from the driver’s license or permit unless the driver submits a current medical certificate or medical variance or changes his or her self-certification to driving only in excepted or intrastate commerce, if permitted by the department; and

(B) Initiate established department procedures for downgrading the license. The commercial driver’s license downgrade shall be completed and recorded within sixty days of the driver’s medical certification status becoming “not-certified” to operate a commercial motor vehicle.

(ii) If a driver fails to provide the department with the certification contained in 49 C.F.R. 383.71(a)(1)(ii), or a current medical examiner’s certificate if the driver self-certifies according to 49 C.F.R. 383.71(a)(1)(ii)(A) that he or she is operating in nonexcepted interstate commerce as required by 49 C.F.R. 383.71(h), the department shall mark that Commercial Driver License Information System driver record as “not-certified” and initiate a commercial driver’s license downgrade following department procedures in accordance with subdivision (2)(d)(i)(B) of this section. The CLP-commercial learner’s permit or commercial driver’s license shall be canceled and marked as “not-certified”.

Source: Laws 2011, LB178, § 14; Laws 2014, LB983, § 31.

Operative date March 29, 2014.

60-4,144.03 Temporary CLP-commercial learner’s permit or commercial driver’s license; issuance; renewal.

(1) The department shall issue a CLP-commercial learner's permit or a commercial driver's license that is temporary only to any applicant who presents documentation under section 60-4,144 that shows his or her authorized stay in the United States is temporary. A CLP-commercial learner's permit or a commercial driver's license that is temporary shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(2) A CLP-commercial learner's permit or a commercial driver's license that is temporary shall clearly indicate that it is temporary with a special notation that states the date on which it expires.

(3) A CLP-commercial learner's permit or a commercial driver's license that is temporary may be renewed only upon presentation of valid documentary evidence that the status, by which the applicant qualified for the CLP-commercial learner's permit or commercial driver's license that is temporary, has been extended by the United States Department of Homeland Security.

Source: Laws 2014, LB983, § 32.

Operative date July 8, 2015.

60-4,144.04 CLP-commercial learner's permit; precondition to issuance of commercial driver's license.

(1) The issuance of a CLP-commercial learner's permit is a precondition to the initial issuance of a commercial driver's license. The issuance of a CLP-commercial learner's permit is also a precondition to the upgrade of a commercial driver's license if the upgrade requires a skills test, however, the CLP-commercial learner's permit holder is not eligible to take the skills test in the first fourteen days after initial issuance of the CLP-commercial learner's permit.

(2) The CLP-commercial learner's permit holder is not eligible to take the commercial driver's license skills test in the first fourteen days after initial issuance of the CLP-commercial learner's permit.

Source: Laws 2014, LB983, § 33.

Operative date July 8, 2015.

60-4,145 Repealed. Laws 2014, LB983, § 69.

Operative date July 8, 2015.

60-4,146 Application; requirements of federal law; certification.

(1) In addition to certifying himself or herself under this section, an applicant shall also certify himself or herself under section 60-4,144.01.

(2) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is not subject to 49 C.F.R. part 391 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this subsection shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(3) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section

75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391.

(4) Upon making application for a CLP-commercial learner's permit or commercial driver's license, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this subsection shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(5) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (2) or (4) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(i) lost voluntary control or consciousness yes no

(ii) experienced vertigo or multiple episodes of dizziness or fainting yes no

(iii) experienced disorientation yes no

(iv) experienced seizures yes no

(v) experienced impairment of memory, memory loss yes no

Please explain:

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) yes no

Please explain:

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? yes no

Please explain, including how the above affects your ability to drive:

Source: Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8; Laws 2011, LB178, § 16; Laws 2012, LB751, § 34; Laws 2014, LB983, § 34. Operative date July 8, 2015.

60-4,147.01 Driver's record; disclosure of convictions; requirements.

The department, a prosecutor, or a court must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP-commercial learner's permit driver's conviction or commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

Source: Laws 2005, LB 76, § 16; Laws 2014, LB983, § 35. Operative date July 8, 2015.

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal regulations adopted pursuant thereto as of January 1, 2014, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10; Laws 2010, LB805, § 7; Laws 2011, LB212, § 6; Laws 2012, LB751, § 35; Laws 2013, LB35, § 5; Laws 2014, LB776, § 6. Effective date March 29, 2014.

60-4,149 Commercial drivers' licenses; examination; issuance; delivery.

(1) The examination for commercial drivers' licenses by the department shall occur in and for each county of the State of Nebraska. Each county shall furnish office space for the administration of the examinations, except that two or more counties may, with the permission of the director, establish a separate facility to jointly conduct the examinations for such licenses.

(2)(a) The segments of the driving skills examination shall be administered and successfully completed in the following order: Pre-trip inspection, basic vehicle control skills, and on-road skills. If an applicant fails one segment of the driving skills examination:

(i) The applicant cannot continue to the next segment of the examination; and

(ii) Scores for the passed segments of the examination are only valid during initial issuance of a CLP-commercial learner's permit. If a CLP-commercial learner's permit is renewed, all three segments of the skills examination must be retaken.

(b) Passing scores for the knowledge and skills tests must meet the standards contained in 49 C.F.R. 383.135.

(3) Except as provided for in sections 60-4,157 and 60-4,158, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(4) The successful applicant shall, within ten days after renewal or within twenty-four hours after initial issuance, present his or her issuance certificate and pay the fee and surcharge as provided in section 60-4,115. A receipt with driving privileges which is valid for up to thirty days shall be issued. The

commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

Source: Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23; Laws 2011, LB215, § 20; Laws 2014, LB983, § 36.
Operative date July 8, 2015.

60-4,149.01 Commercial drivers' licenses; law examination; exceptions; waiver.

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2) A nonresident who holds a valid commercial driver's license from another state shall not be required to take the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the nonresident commercial driver's license holder surrenders his or her valid out-of-state commercial driver's license to licensing staff.

Source: Laws 1993, LB 420, § 9; Laws 1996, LB 938, § 3; Laws 1999, LB 704, § 35; Laws 2001, LB 387, § 9; Laws 2005, LB 76, § 13; Laws 2014, LB983, § 37.
Operative date July 8, 2015.

60-4,149.02 Commercial drivers' licenses; driving skills examination; exemption for driver with military commercial motor vehicle experience; conditions and limitations; applicant; certification.

A commercial driver's license examiner shall not require the driving skills examination for a commercial motor vehicle driver with military commercial motor vehicle experience who is currently licensed at the time of his or her application for a commercial driver's license and may substitute an applicant's driving record in combination with certain driving experience. The department may impose conditions and limitations as allowed under 49 C.F.R. 383 to restrict the applicants from whom the department may accept alternative requirements for the driving skills examination authorized in section 60-4,155. Such conditions and limitations shall require at least the following:

(1) An applicant must certify that, during the two-year period immediately prior to applying for a commercial driver's license, he or she:

(a) Has not had more than one operator's license, except for a military operator's license;

(b) Has not had any operator's license suspended, revoked, or canceled;

(c) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in 49 C.F.R. 383.51(b);

(d) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in 49 C.F.R. 383.51(c);

(e) Has not had any conviction for a violation of military, state, or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident; and

(f) Has no record of an accident in which he or she was at fault; and

(2) An applicant must provide evidence and certify that he or she:

(a) Is regularly employed or was regularly employed within the last ninety days in a military position requiring operation of a commercial motor vehicle;

(b) Was exempted from the commercial driver's license requirements in 49 C.F.R. 383.3(c); and

(c) Was operating a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate, for at least two years immediately preceding discharge from the military.

Source: Laws 2014, LB983, § 40.

Operative date July 18, 2014.

60-4,150 Commercial drivers' licenses; CLP-commercial learner's permits; replacement licenses; delivery.

(1) Any person holding a commercial driver's license or CLP-commercial learner's permit who loses his or her license or permit, who requires issuance of a replacement license or permit because of a change of name or address, or whose license or permit is mutilated or unreadable may obtain a replacement commercial driver's license or CLP-commercial learner's permit by filing an application and by furnishing proof of identification in accordance with section 60-4,144.

(2) The application for a replacement license or permit because of a change of name or address shall be made within sixty days after the change of name or address.

(3) A replacement commercial driver's license or CLP-commercial learner's permit shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

(4) Replacement commercial drivers' licenses or CLP-commercial learners' permits shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses or permits as provided for by section 60-4,149. Upon issuance of any replacement commercial driver's license or permit, the commercial driver's license or CLP-commercial learner's permit for which the replacement license or permit is issued shall be void.

(5) Each replacement commercial driver's license shall be issued with the same expiration date as the license for which the replacement is issued. The replacement license shall also state the new issuance date.

Source: Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24; Laws 2010, LB805, § 8; Laws 2011, LB215, § 21; Laws 2014, LB777, § 10; Laws 2014, LB983, § 38.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB777, section 10, with LB983, section 38, to reflect all amendments.

Note: Changes made by LB777 became effective July 18, 2014. Changes made by LB983 became operative July 8, 2015.

60-4,151 Commercial driver's license; RCDL-restricted commercial driver's license; SEP-seasonal permit; CLP-commercial learner's permit; form.

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The commercial driver's license shall be marked Nondomiciled if the license is a nondomiciled commercial driver's license.

(b) The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The RCDL-restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The RCDL-restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The SEP-seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The SEP-seasonal permit shall be valid only when held in conjunction with an RCDL-restricted commercial driver's license.

(4) The CLP-commercial learner's permit shall be conspicuously marked Nebraska Commercial Learner's Permit and shall be, to the maximum extent practicable, tamper and forgery proof. The permit shall also be marked Nondomiciled if the permit is a nondomiciled CLP-commercial learner's permit.

Source: Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25; Laws 2011, LB215, § 22; Laws 2014, LB983, § 39.

Operative date July 8, 2015.

60-4,153 Issuance of license; department; duties.

Prior to the issuance of any original or renewal commercial driver's license, the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, or the issuance of a CLP-commercial learner's permit, the department shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license or CLP-commercial learner's permit issued by this state and within ten days prior to the issuance or reissuance for all other applicants:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license or commercial learner's permit issued by any other state, whether such license or permit or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled for cause in the three-year period ending on the date of application, (c) has been convicted of operation of a motor vehicle while under the influence of or while impaired by alcohol or a controlled substance, a traffic violation arising in connection with a fatal traffic accident, reckless driving, racing on the highways, failure to render aid or provide identification when involved in an accident which resulted in a fatality or personal injury, or perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law, rule, or regulation related to the operation of a motor vehicle, (d) is not eligible, or (e) is deceased.

Source: Laws 1989, LB 285, § 103; Laws 1999, LB 704, § 36; Laws 2011, LB178, § 17; Laws 2014, LB983, § 41.
Operative date July 8, 2015.

60-4,154 Issuance of license or permit; director notify Commercial Driver License Information System; department; post information.

(1) Prior to the issuance of any original or renewal commercial driver's license, the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, or the issuance of a CLP-commercial learner's permit, the director shall notify the Commercial Driver License Information System of the issuance and shall provide the applicant's name, social security number, and any other required information to the operator of the system.

(2) The department shall post information from the medical examiner's certificate to the Commercial Driver License Information System in accordance with section 60-4,144.02 and 49 C.F.R. 383.73.

Source: Laws 1989, LB 285, § 104; Laws 2011, LB178, § 18; Laws 2014, LB983, § 42.
Operative date July 8, 2015.

60-4,156 Repealed. Laws 2014, LB 983, § 69.

Operative date July 8, 2015.

60-4,157 Driving skills examination; waiver based on third-party tester; licensure in another state; report of examination results.

(1) A commercial driver's license examiner may waive the driving skills examination when an applicant presents evidence, on a form to be prescribed by the director, that he or she has successfully passed a driving skills examination administered by a third-party tester.

(2) A third-party skills test examiner may administer a driving skills examination to an applicant who has taken training in this state but is to be licensed in another state. The driving skills examination results shall be reported by the third-party skills test examiner to the department. The department shall transmit electronically the driving skills examination results directly from this state to the licensing state in an efficient and secure manner to be determined by the director.

(3) A third-party skills test examiner who is also a skills instructor either as part of a school, training program, or otherwise is prohibited from administer-

ing a skills test to an applicant who received skills training by that skills test examiner.

Source: Laws 1989, LB 285, § 107; Laws 2014, LB983, § 43.
Operative date July 8, 2015.

60-4,158 Third-party testers; applicant; criminal history record check; fingerprints; rules and regulations; fees; violation; penalty.

(1) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department. Such rules and regulations shall substantially comply with the requirements of 49 C.F.R. 383.75. A third-party skills test examiner employed by a certified third-party tester is not required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(2)(a) An applicant to be certified as a third-party skills test examiner shall provide fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall undertake a search for criminal history record information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report to the department that includes the criminal history record information concerning the applicant. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(b) A third-party skills test examiner shall be subject to a national criminal history record information check.

(c) The department shall maintain a record of the results of the criminal background check and third-party skills test examiner test training and certification of all third-party skills test examiners.

(d) The department shall rescind the certification to administer commercial driver's license tests of all third-party skills test examiners who:

(i) Do not successfully complete the required refresher training every four years; or

(ii) Do not pass a national criminal history record information check. Criteria for not passing the criminal background check must include at least the following:

(A) Any felony conviction within the last ten years; or

(B) Any conviction involving fraudulent activities.

(3) A certification to conduct third-party testing shall be valid for two years, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester. The department shall remit the fees collected to the State Treasurer for credit to the General Fund.

(4) Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his or her certification revoked by the department.

Source: Laws 1989, LB 285, § 108; Laws 1999, LB 704, § 37; Laws 2014, LB983, § 44.

Operative date July 8, 2015.

60-4,159 Licensee; permit holder; convictions; disqualifications; notification required; violation; penalty.

(1) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department shall, within ten days after the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state.

(2) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(3) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department whose commercial driver's license or CLP-commercial learner's permit is suspended, revoked, or canceled by any state, who loses the privilege to operate a commercial motor vehicle in any state for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(4) Any person who fails to provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 109; Laws 2005, LB 76, § 14; Laws 2014, LB983, § 45.

Operative date July 8, 2015.

60-4,160 Refusal or denial of application; notice; appeal.

Written notice shall be delivered to any applicant whose application for a commercial driver's license or CLP-commercial learner's permit is refused or denied for cause. The applicant shall have a right to an immediate appeal to the director upon receipt of such notice. The director shall hear the appeal and render a prompt finding not later than ten days after receipt of the appeal.

Source: Laws 1989, LB 285, § 110; Laws 2014, LB983, § 46.

Operative date July 8, 2015.

60-4,162 Employment as driver; employer; duties; violation; penalty.

(1) Each employer shall require prospective applicants for employment as a driver of a commercial motor vehicle to provide the information required by section 60-4,161.

(2) No employer may knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current commercial learner's permit or commercial driver's license or does not have a commercial learner's permit or commercial driver's license with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's commercial learner's permit or commercial driver's license;

(b) During any period in which the driver has a commercial learner's permit or commercial driver's license disqualified by a state, has lost the right to operate a commercial motor vehicle in a state, or has been disqualified from operating a commercial motor vehicle;

(c) During any period in which the driver has more than one commercial learner's permit or commercial driver's license;

(d) During any period in which the driver, the commercial motor vehicle he or she is operating, or the motor carrier operation is subject to an out-of-service order; or

(e) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.

(3) Any employer who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 112; Laws 2002, LB 499, § 2; Laws 2014, LB983, § 47.

Operative date July 8, 2015.

60-4,164 Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.

(1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the amount of alcoholic content in his or her blood or breath.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the alcoholic content of such blood or breath.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or

breath which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood or breath or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The director may accept a sworn report submitted electronically. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood or breath by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test or tests of his or her blood or breath by reason of leaving this state. If the person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

Source: Laws 1989, LB 285, § 114; Laws 1992, LB 872, § 6; Laws 1993, LB 191, § 2; Laws 1996, LB 323, § 6; Laws 2011, LB667, § 31.

60-4,167 Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.

Upon receipt of a law enforcement officer's sworn report provided for in section 60-4,164, the director shall serve the notice of disqualification to the person who is the subject of the report by regular United States mail to the person's last-known address appearing on the records of the director. If the address on the director's records differs from the address on the arresting officer's report, the notice of disqualification shall be sent to both addresses. The notice of disqualification shall contain a statement explaining the operation of the disqualification procedure and the rights of the person. The director shall also provide to the person a self-addressed envelope and a petition form which the person may use to request a hearing before the director to contest the disqualification. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the disqualification will be foreclosed. The director shall prescribe and approve the form for

the petition, the self-addressed envelope, and the notice of disqualification. If not contested, the disqualification shall automatically take effect thirty days after the date of mailing of the notice of disqualification by the director. Any chemical test or tests made under section 60-4,164, if made in conformity with the requirements of section 60-6,201, shall be competent evidence of the alcoholic content of such person's blood or breath. The commercial driver's license or commercial learner's permit of the person who is the subject of the report shall be automatically disqualified upon the expiration of thirty days after the date of the mailing of the notice of disqualification by the director. The director shall conduct the hearing in the county in which the violation occurred or in any county agreed to by the parties. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by regular United States mail postmarked at least seven days prior to the hearing date.

After granting the petitioner an opportunity to be heard on such issue, if it is not shown to the director that the petitioner's refusal to submit to such chemical test or tests was reasonable or unless it is shown to the director that the petitioner was not operating or in the actual physical control of a commercial motor vehicle with an alcoholic concentration in his or her blood or breath equal to or in excess of that specified in subsection (5) of section 60-4,164, the director shall enter an order pursuant to section 60-4,169 revoking the petitioner's commercial driver's license or commercial learner's permit and the petitioner's privilege to operate a commercial motor vehicle in this state and disqualifying the person from operating a commercial motor vehicle for the period specified by section 60-4,168.

Source: Laws 1989, LB 285, § 117; Laws 1993, LB 191, § 5; Laws 1993, LB 370, § 92; Laws 1996, LB 323, § 8; Laws 2012, LB751, § 36; Laws 2014, LB983, § 48.
Operative date July 8, 2015.

60-4,167.01 Alcoholic liquor; disqualification decision; director; duties.

(1) The director shall reduce the decision disqualifying a commercial driver from operating a commercial motor vehicle pursuant to a hearing under section 60-4,167 to writing and the director shall notify the person in writing of the disqualification within seven days following a hearing. The decision shall set forth the period of disqualification and be served by mailing it to such person by regular United States mail to the address provided to the director at the hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not disqualify the commercial driver from operating a commercial motor vehicle, the director shall notify the person in writing of the decision within seven days following a hearing. The notice shall be mailed by regular United States mail as provided in subsection (1) of this section. No reinstatement fee shall be charged.

Source: Laws 1996, LB 323, § 9; Laws 2012, LB751, § 37.

60-4,168 Disqualification; when.

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from operating a commercial motor vehicle for one year upon his or her first conviction, after April 1, 1992, in this or any other state for:

(a) Operating a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, operating any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Operating a commercial motor vehicle in violation of section 60-4,163 or 60-4,164;

(c) Leaving the scene of an accident involving a commercial motor vehicle operated by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle operated by the person;

(d) Using a commercial motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section or, beginning September 30, 2005, using any motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section;

(e) Beginning September 30, 2005, operating a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from operating a commercial motor vehicle; or

(f) Beginning September 30, 2005, causing a fatality through the negligent or criminal operation of a commercial motor vehicle.

(2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from operating a commercial motor vehicle for three years.

(3) A person shall be disqualified from operating a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents; or

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance.

(4)(a) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a commercial motor vehicle.

(b) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period

while operating a motor vehicle other than a commercial motor vehicle if the convictions have resulted in the revocation, cancellation, or suspension of the person's operator's license or driving privileges.

(5)(a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5)(b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b)(i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) This subsection applies beginning July 8, 2015. A person shall be disqualified from operating a commercial motor vehicle for at least one year if, on or after July 8, 2015, the person has been convicted of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license.

(7) This subsection applies beginning July 8, 2015. If the department receives credible information that a CLP-commercial learner's permit holder or a commercial driver's license holder is suspected, but has not been convicted, on or after July 8, 2015, of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license, the department must require the driver to retake the skills and knowledge tests. Within thirty days after receiving notification from the department that retesting is necessary, the affected CLP-commercial learner's permit holder or commercial driver's license holder must make an appointment or otherwise schedule to take the next available test. If the CLP-commercial learner's permit holder or commercial driver's license holder fails to make an appointment within thirty days, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the driver fails either the knowledge or skills test or does not take the test, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the holder of a CLP-commercial learner's permit or commercial driver's license has had his or her CLP-commercial learner's permit or commercial driver's license

disqualified, he or she must reapply for a CLP-commercial learner's permit or commercial driver's license under department procedures applicable to all applicants for a CLP-commercial learner's permit or commercial driver's license.

(8) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(9) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(10) For purposes of this section, serious traffic violation means:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140;

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person;

(f) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license in the operator's possession;

(h) Beginning September 30, 2005, operating a commercial motor vehicle without the proper class of commercial driver's license and any endorsements, if required, for the specific vehicle group being operated or for the passengers or type of cargo being transported on the vehicle;

(i) Beginning October 27, 2013, texting while driving as described in section 60-6,179.02; and

(j) Using a handheld mobile telephone as described in section 60-6,179.02.

Source: Laws 1989, LB 285, § 118; Laws 1990, LB 980, § 24; Laws 1993, LB 191, § 6; Laws 1993, LB 370, § 93; Laws 1996, LB 323, § 11; Laws 2001, LB 773, § 13; Laws 2002, LB 499, § 3; Laws 2003, LB 562, § 16; Laws 2005, LB 76, § 15; Laws 2012, LB751, § 38; Laws 2014, LB983, § 49.

Operative date March 29, 2014.

60-4,169 Revocation; when.

Whenever it comes to the attention of the director that any person when operating a motor vehicle has, based upon the records of the director, been convicted of or administratively determined to have committed an offense for which disqualification is required pursuant to section 60-4,146.01, 60-4,168, or

60-4,168.01, the director shall summarily revoke (1) the commercial driver's license or CLP-commercial learner's permit and privilege of such person to operate a commercial motor vehicle in this state or (2) the privilege, if such person is a nonresident, of operating a commercial motor vehicle in this state. Any revocation ordered by the director pursuant to this section shall commence on the date of the signing of the order of revocation or the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is later, unless the order of the court requires the jail time and the revocation to run concurrently.

Source: Laws 1989, LB 285, § 119; Laws 1993, LB 31, § 19; Laws 1993, LB 420, § 12; Laws 1996, LB 323, § 12; Laws 2001, LB 38, § 37; Laws 2010, LB805, § 9; Laws 2014, LB983, § 50.
Operative date July 8, 2015.

60-4,170 Revocation; notice; failure to surrender license or permit; violation; penalty; appeal.

Within ten days after the revocation provided for by section 60-4,169, the director shall notify in writing the person whose commercial driver's license, CLP-commercial learner's permit, or privilege to operate a commercial motor vehicle has been revoked that such license, permit, or privilege has been revoked. Such notice shall: (1) Contain a list of the disqualifying convictions or administrative determinations upon which the director relies as his or her authority for the revocation, with the dates on which such disqualifying violations occurred and the dates of such convictions or administrative determinations and the trial courts or administrative agencies in which such convictions or administrative determinations were rendered; (2) state the term of revocation; (3) include a demand that the commercial driver's license or CLP-commercial learner's permit be returned to the director immediately; and (4) be served by mailing the notice to such person by regular United States mail to the address of such person. Any person refusing or failing to surrender a commercial driver's license or CLP-commercial learner's permit as required by this section shall, upon conviction, be guilty of a Class III misdemeanor.

Any person who feels himself or herself aggrieved because of a revocation pursuant to section 60-4,169 may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation unless a stay of such revocation shall be allowed by the court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event of a final judgment of a court against such person, until the full time of revocation, as fixed by the director, has elapsed.

Source: Laws 1989, LB 285, § 120; Laws 1999, LB 704, § 38; Laws 2012, LB751, § 39; Laws 2014, LB983, § 51.
Operative date July 8, 2015.

60-4,171 Issuance of Class O or M operator's license; reinstatement of commercial driver's license or CLP-commercial learner's permit; when.

(1) Following any period of revocation ordered by a court, a resident who has had a commercial driver's license or CLP-commercial learner's permit revoked pursuant to section 60-4,169 may apply for a Class O or M operator's license.

(2) Any person who has had his or her commercial driver's license or CLP-commercial learner's permit revoked pursuant to section 60-4,169 may, at the end of such revocation period, apply to have his or her eligibility for a commercial driver's license or CLP-commercial learner's permit reinstated. The applicant shall (a) apply to the department and meet the requirements of section 60-4,144, (b) take the commercial driver's license knowledge and driving skills examinations prescribed pursuant to section 60-4,155 if applying for a commercial driver's license, (c) certify pursuant to section 60-4,144.01 and meet the applicable medical requirements for such certification, (d) be subject to a check of his or her driving record, (e) pay the fees specified in section 60-4,115 and a reinstatement fee as provided in section 60-499.01, and (f) surrender any operator's license issued pursuant to subsection (1) of this section.

Source: Laws 1989, LB 285, § 121; Laws 1993, LB 420, § 14; Laws 1993, LB 491, § 14; Laws 1997, LB 752, § 144; Laws 1999, LB 704, § 39; Laws 2001, LB 38, § 38; Laws 2001, LB 574, § 27; Laws 2011, LB178, § 19; Laws 2014, LB983, § 52.
Operative date July 8, 2015.

60-4,172 Nonresident licensee or permit holder; conviction within state; director; duties.

(1) Within ten days after receiving an abstract of conviction of any nonresident who holds a commercial learner's permit or commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident who holds a commercial learner's permit or commercial driver's license and the Commercial Driver License Information System of such conviction.

(2)(a) Within ten days after disqualifying a nonresident who holds a commercial learner's permit or commercial driver's license or canceling, revoking, or suspending the commercial learner's permit or commercial driver's license held by a nonresident, for a period of at least sixty days, the department shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such action.

(b) The notification shall include both the disqualification and the violation that resulted in the disqualification, cancellation, revocation, or suspension. The notification and the information it provides shall be recorded on the driver's record.

(3) Within ten days after receiving an abstract of conviction of any nonresident who holds a commercial learner's permit or commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in any type of motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such conviction.

(4) Within ten days after receiving an abstract of conviction of any nonresident who holds a driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations,

committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident.

Source: Laws 1989, LB 285, § 122; Laws 2003, LB 562, § 19; Laws 2014, LB983, § 53.

Operative date July 8, 2015.

(j) STATE IDENTIFICATION CARDS

60-4,180 State identification card; issuance authorized; prior cards; invalid.

Any person who is a resident of this state may obtain a state identification card with a digital image of the person included. State identification cards shall be issued in the manner provided in section 60-4,181. Any identification card issued under prior law prior to January 1, 1990, shall be invalid after such date.

Source: Laws 1989, LB 284, § 3; Laws 1993, LB 201, § 5; Laws 2001, LB 574, § 28; Laws 2014, LB777, § 11.

Effective date July 18, 2014.

Cross References

Application, see section 60-484.

Duplicate or replacement card, see section 60-4,120.

Expiration, see section 60-490.

Photograph affixed to card, see section 60-4,119.

Prohibited acts, see section 60-491.

Renewal procedure, see section 60-4,122.

Violations, penalties, see section 60-491.

60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.

(1) Each applicant for a state identification card shall provide the information and documentation required by section 60-484 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04. The form of the state identification card shall comply with section 60-4,117. Upon presentation of an applicant's issuance certificate, the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(2) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or issuance certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or issuance certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

(3) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. No person shall be a holder of a state identification card and an operator's license at the same time.

Source: Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws

1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309, § 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26; Laws 2011, LB215, § 23.

(k) POINT SYSTEM

60-4,182 Point system; offenses enumerated.

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

- (1) Conviction of motor vehicle homicide - 12 points;
- (2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;
- (3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;
- (4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;
- (5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;
- (6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;
- (7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;
- (8) Negligent driving in violation of any city or village ordinance - 3 points;
- (9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;
- (10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:
 - (a) Not more than five miles per hour over the speed limit - 1 point;
 - (b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;
 - (c) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and
 - (d) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points;

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 or texting while driving in violation of subsection (1) or (3) of section 60-6,179.02 - 3 points;

(14) Using a handheld mobile telephone in violation of subsection (2) or (4) of section 60-6,179.02 - 3 points;

(15) Unlawful obstruction or interference of the view of an operator in violation of section 60-6,256 - 1 point;

(16) A violation of subsection (1) of section 60-6,175 - 3 points; and

(17) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02 - 1 point.

Subdivision (17) of this section does not include violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

Source: Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 169, § 2, p. 617; Laws 1959, c. 174, § 1, p. 625; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 328, § 1; Laws 1975, LB 381, § 4; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 224, § 3; Laws 1987, LB 430, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1; Laws 2008, LB621, § 1; Laws 2010, LB945, § 1; Laws 2011, LB500, § 1; Laws 2012, LB751, § 40; Laws 2012, LB1039, § 1; Laws 2014, LB983, § 54.
Operative date March 29, 2014.

Cross References

Assessment of points when person is placed on probation, see section 60-497.01.

60-4,184 Revocation of license; notice; failure to return license; procedure; penalty; appeal; effect.

Within ten days after the revocation provided for by section 60-4,183, the director shall notify in writing the person whose operator's license has been revoked that such license has been revoked. Such notice shall:

(1) Contain a list of the convictions for violations upon which the director relies as his or her authority for the revocation, with the dates of such violations upon which convictions were had and the dates of such convictions, the trial courts in which such judgments of conviction were rendered, and the points charged for each conviction;

(2) State the term of such revocation;

(3) Include a demand that the license be returned to the director immediately; and

(4) Be served by mailing it to such person by regular United States mail to the last-known residence of such person or, if such address is unknown, to the last-known business address of such person.

If any person fails to return his or her license to the director as demanded, the director shall immediately direct any peace officer or authorized representative of the director to secure possession of such license and return the license to the director. A refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her license as required by this section shall be guilty of a Class III misdemeanor.

Any person who feels aggrieved because of such revocation may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation of such license unless a stay of such order is allowed by a judge of such court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event the final judgment of a court finds against such person, until the full time of revocation, as fixed by the Department of Motor Vehicles, has elapsed.

Source: Laws 1953, c. 219, § 3, p. 770; Laws 1955, c. 157, § 1, p. 460; Laws 1957, c. 242, § 32, p. 845; Laws 1957, c. 366, § 28, p. 1263; Laws 1959, c. 174, § 3, p. 627; R.R.S.1943, § 39-7,130; Laws 1975, LB 263, § 2; Laws 1989, LB 285, § 4; R.S.Supp.,1992, § 39-669.28; Laws 1993, LB 370, § 82; Laws 1999, LB 704, § 42; Laws 2012, LB751, § 41.

(I) VETERAN NOTATION**60-4,189 Operator's license; state identification card; notation of word "veteran"; Department of Motor Vehicles; duties; replacement license or card.**

(1) An operator's license or a state identification card shall include a notation of the word "veteran" on the front of the license or card as directed by the department if the individual applying for such license or card is eligible for the license or card and (a) has served on active duty in the armed forces of the United States, other than active duty for training, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from such service, (b) registers with the Department of Veterans' Affairs pursuant to section 80-414 as verification of such service, and

(c) indicates on the application under section 60-484 his or her wish to include such notation on his or her license or card.

(2) The Department of Motor Vehicles shall consult the registry established pursuant to section 80-414 before placing the notation of the word “veteran” on the operator’s license or state identification card issued to the applicant. Such notation shall not be authorized unless the registry verifies the applicant’s eligibility. If the Director of Motor Vehicles discovers evidence of fraud in an application under this section, the director may summarily cancel the license or state identification card and send notice of the cancellation to the licensee or cardholder. If the Department of Motor Vehicles has information that an individual is no longer eligible for the notation, the department may summarily cancel the license and send notice of the cancellation to the licensee or cardholder. The notation shall not be restored until the Department of Motor Vehicles subsequently verifies the applicant’s eligibility by consulting the registry of the Department of Veterans’ Affairs.

(3) The notation authorized in subsection (1) of this section shall continue to be included on the license or card upon renewal of such license or card if the licensee or cardholder, at the time of renewal, indicates the desire to include the notation.

(4) An individual may obtain a replacement operator’s license or state identification card to add or remove the notation authorized in subsection (1) of this section by applying to the Department of Motor Vehicles for such replacement license or card and, if adding the notation, by meeting the requirements of subsection (1) of this section. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

Source: Laws 2013, LB93, § 4.

ARTICLE 5

MOTOR VEHICLE SAFETY RESPONSIBILITY

(a) DEFINITIONS

Section

60-501. Terms, defined.

(c) SECURITY FOLLOWING ACCIDENT

60-507. Accident; damage in excess of one thousand dollars; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520. Judgments; payments sufficient to satisfy requirements.

60-547. Bond; proof of financial responsibility.

(a) DEFINITIONS

60-501 Terms, defined.

For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

(1) Department means Department of Motor Vehicles;

(2) Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a

maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes;

(3) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;

(4) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(5) Low-speed vehicle means a four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011;

(6) Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (a) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (b) is sixty-seven inches or less in width, (c) has a dry weight of four thousand two hundred pounds or less, (d) travels on four or more tires, (e) has a top speed of approximately fifty-five miles per hour, (f) is equipped with a bed or compartment for hauling, (g) has an enclosed passenger cab, (h) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (i) has a four-speed, five-speed, or automatic transmission;

(7) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, mini-trucks, and low-speed vehicles. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, and (j) off-road designed vehicles, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663;

(8) Nonresident means every person who is not a resident of this state;

(9) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(10) Operator means every person who is in actual physical control of a motor vehicle;

(11) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(12) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(13) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(14) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(15) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(16) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

Source: Laws 1949, c. 178, § 1, p. 482; Laws 1957, c. 366, § 42, p. 1275; Laws 1959, c. 298, § 1, p. 1107; Laws 1959, c. 299, § 1, p. 1123; Laws 1971, LB 644, § 4; Laws 1972, LB 1196, § 4; Laws 1973, LB 365, § 1; Laws 1979, LB 23, § 14; Laws 1983, LB 253, § 1; Laws 1987, LB 80, § 11; Laws 1993, LB 121, § 385; Laws 1993, LB 370, § 94; Laws 2002, LB 1105, § 447; Laws 2010, LB650, § 32; Laws 2011, LB289, § 26; Laws 2012, LB898, § 3; Laws 2012, LB1155, § 15.

(c) SECURITY FOLLOWING ACCIDENT

60-507 Accident; damage in excess of one thousand dollars; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.

(1) Within ninety days after the receipt by the Department of Roads of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person, including such operator, to an apparent extent in excess of one thousand dollars, the Department of Motor Vehicles shall suspend (a) the license of each operator of a motor vehicle in any manner involved in such accident and (b) the privilege, if such operator is a nonresident, of operating a motor vehicle within this state, unless such operator deposits security in a sum which shall be sufficient, in the judgment of the Department of Motor Vehicles, to satisfy any judgment or

judgments for damages resulting from such accident which may be recovered against such operator and unless such operator gives proof of financial responsibility.

Notice of such suspension shall be sent by the Department of Motor Vehicles by regular United States mail to such operator not less than twenty days prior to the effective date of such suspension at his or her last-known mailing address as shown by the records of the department and shall state the amount required as security and the requirement of proof of financial responsibility. In the event a person involved in a motor vehicle accident within this state fails to make a report to the Department of Motor Vehicles indicating the extent of his or her injuries or the damage to his or her property within thirty days after the accident, and the department does not have sufficient information on which to base an evaluation of such injury or damage, the department, after reasonable notice to such person, may not require any deposit of security for the benefit or protection of such person. If the operator fails to respond to the notice on or before twenty days after the date of the notice, the director shall summarily suspend the operator's license or privilege and issue an order of suspension.

(2) The order of suspension provided for in subsection (1) of this section shall not be entered by the Department of Motor Vehicles if the department determines that in its judgment there is no reasonable possibility of a judgment being rendered against such operator.

(3) In determining whether there is a reasonable possibility of judgment being rendered against such operator, the department shall consider all reports and information filed in connection with the accident.

(4) The order of suspension provided for in subsection (1) of this section shall advise the operator that he or she has a right to appeal the order of suspension in accordance with the provisions set forth in section 60-503.

(5) The order of suspension provided for in subsection (1) of this section shall be sent by regular United States mail to the person's last-known mailing address as shown by the records of the department.

Source: Laws 1949, c. 178, § 7, p. 486; Laws 1953, c. 215, § 3, p. 763; Laws 1957, c. 366, § 45, p. 1278; Laws 1959, c. 298, § 5, p. 1111; Laws 1961, c. 319, § 7, p. 1022; Laws 1967, c. 392, § 1, p. 1218; Laws 1972, LB 1303, § 2; Laws 1973, LB 417, § 4; Laws 1985, LB 94, § 6; Laws 1997, LB 10, § 2; Laws 2003, LB 185, § 1; Laws 2012, LB751, § 42.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520 Judgments; payments sufficient to satisfy requirements.

Judgments in excess of the amounts specified in subdivision (13) of section 60-501 shall, for the purpose of the Motor Vehicle Safety Responsibility Act only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

Source: Laws 1949, c. 178, § 20, p. 492; Laws 2010, LB650, § 33; Laws 2011, LB289, § 27; Laws 2012, LB1155, § 16.

60-547 Bond; proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties who each own real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in subdivision (13) of section 60-501. It shall be filed with the department and shall not be cancelable except after ten days' written notice to the department. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the department in the office of the register of deeds of the county where such real estate shall be located.

Source: Laws 1949, c. 178, § 47, p. 498; Laws 2010, LB650, § 34; Laws 2011, LB289, § 28; Laws 2012, LB1155, § 17.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

Section

- 60-601. Rules, how cited.
 60-605. Definitions, where found.
 60-622.01. Golf car vehicle, defined.
 60-628.01. Low-speed vehicle, defined.
 60-636.01. Minitruck, defined.
 60-658. School bus, defined.

(d) ACCIDENTS AND ACCIDENT REPORTING

- 60-697. Accident; driver's duty; penalty.
 60-698. Accident; failure to stop; penalty.

(e) APPLICABILITY OF TRAFFIC LAWS

- 60-6,109. Drivers to exercise due care with pedestrian; audible signal.

(g) USE OF ROADWAY AND PASSING

- 60-6,133. Overtaking and passing rules; vehicles proceeding in same direction.

(l) SPECIAL STOPS

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- 60-6,197.05. Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.
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- 60-6,197.10. Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.
- 60-6,198. Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.
- 60-6,209. License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.
- 60-6,211.05. Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.
- 60-6,211.08. Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.
- 60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty.
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- (y) SIZE, WEIGHT, AND LOAD
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- 60-6,298. Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.
- 60-6,299. Permit to move building; limitations; application; Department of Roads; rules and regulations; violation; penalty.
- 60-6,300. Vehicles; excess load prohibited; exception; violation; penalty.
- 60-6,304. Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.
- (ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES
- 60-6,348. Minibikes and off-road designed vehicles; use; emergencies; parades.
- 60-6,349. Minibikes and similar vehicles; sale; notice.

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- (ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES
- 60-6,355. All-terrain vehicle, defined; utility-type vehicle, defined.
- (ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE
- 60-6,378. Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.
- (kk) SPECIAL RULES FOR LOW-SPEED VEHICLES
- 60-6,380. Low-speed vehicle; restrictions on use.
- (ll) SPECIAL RULES FOR GOLF CAR VEHICLES
- 60-6,381. Golf car vehicles; city, village, or county; operation authorized; Department of Roads; power to prohibit operation.
- (mm) FARM EQUIPMENT DEALERS
- 60-6,382. Farm equipment dealers; farm equipment haulers act as representative; conditions; signed statement; contents.

(a) GENERAL PROVISIONS

60-601 Rules, how cited.

Sections 60-601 to 60-6,382 shall be known and may be cited as the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 291, § 14; Laws 1992, LB 872, § 5; R.S.Supp.,1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14; Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18; Laws 2009, LB92, § 1; Laws 2010, LB650, § 35; Laws 2010, LB945, § 2; Laws 2011, LB164, § 1; Laws 2011, LB289, § 29; Laws 2011, LB667, § 32; Laws 2011, LB675, § 4; Laws 2012, LB751, § 43; Laws 2012, LB1155, § 18; Laws 2014, LB1039, § 1.

Effective date July 18, 2014.

60-605 Definitions, where found.

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

Source: Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19; Laws 2010, LB650, § 36; Laws 2011, LB289, § 30; Laws 2012, LB1155, § 19.

60-622.01 Golf car vehicle, defined.

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, is designed and

manufactured for operation on a golf course for sporting and recreational purposes, and is not being operated within the boundaries of a golf course.

Source: Laws 2012, LB1155, § 20.

60-628.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2011, LB289, § 31.

60-636.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 37; Laws 2012, LB898, § 4.

60-658 School bus, defined.

School bus shall mean any motor vehicle which complies with the general design, equipment, and color requirements adopted and promulgated pursuant to subdivision (12) of section 79-318 and which is used to transport students to or from school or in connection with school activities but shall not include buses operated by common carriers in urban transportation of school students.

Source: Laws 1993, LB 370, § 154; Laws 1993, LB 575, § 5; Laws 2009, LB549, § 3; Laws 2013, LB222, § 20.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-697 Accident; driver's duty; penalty.

(1) The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (a) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (b) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (c) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

(2) Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws

1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8; Laws 2011, LB675, § 5.

Cross References

Operator's license, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

60-698 Accident; failure to stop; penalty.

(1) Any person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of (a) a Class IIIA felony if the accident resulted in an injury to any person other than a serious bodily injury as defined in section 60-6,198 or death or (b) a Class III felony if the accident resulted in the death of any person or serious bodily injury as defined in section 60-6,198.

(2) The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

Source: Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9; Laws 2011, LB675, § 6.

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,109 Drivers to exercise due care with pedestrian; audible signal.

Notwithstanding the other provisions of the Nebraska Rules of the Road, every driver of a vehicle shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, to avoid colliding with any pedestrian upon any roadway and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person upon a roadway.

Source: Laws 1973, LB 45, § 44; R.S.1943, (1988), § 39-644; Laws 1993, LB 370, § 205; Laws 2012, LB1030, § 1.

(g) USE OF ROADWAY AND PASSING

60-6,133 Overtaking and passing rules; vehicles proceeding in same direction.

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to

the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle;

(2) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle; and

(3) The driver of a vehicle overtaking a bicycle or electric personal assistive mobility device proceeding in the same direction shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, when passing a bicycle or electric personal assistive mobility device and shall maintain such clearance until safely past the overtaken bicycle or electric personal assistive mobility device.

Source: Laws 1973, LB 45, § 22; R.S.1943, (1988), § 39-622; Laws 1993, LB 370, § 229; Laws 1993, LB 575, § 6; Laws 2000, LB 1361, § 3; Laws 2012, LB1030, § 2.

(l) SPECIAL STOPS

60-6,175 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.

(1) Upon meeting or overtaking, from the front or rear, any school bus on which the yellow warning signal lights are flashing, the driver of a motor vehicle shall reduce the speed of such vehicle to not more than twenty-five miles per hour, shall bring such vehicle to a complete stop when the school bus is stopped, the stop signal arm is extended, and the flashing red signal lights are turned on, and shall remain stopped until the flashing red signal lights are turned off, the stop signal arm is retracted, and the school bus resumes motion. This section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign as provided in subsection (8) of this section directing traffic to proceed. Any person violating this subsection shall be guilty of a Class IV misdemeanor, shall be fined five hundred dollars, and shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182.

(2) Except as provided in subsection (8) of this section, the driver of any school bus, when stopping to receive or discharge pupils, shall turn on flashing yellow warning signal lights at a distance of not less than three hundred feet when inside the corporate limits of any city or village and not less than five hundred feet nor more than one thousand feet in any area outside the corporate limits of any city or village from the point where such pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils, the bus driver shall bring the school bus to a stop, extend a stop signal arm, and turn on the flashing red signal lights. After receiving or discharging pupils, the bus driver shall turn off the flashing red signal lights, retract the stop signal arm, and then proceed on the route.

(3)(a) Except as provided in subdivision (b) of this subsection, no school bus shall stop to load or unload pupils outside of the corporate limits of any city or village or on any part of the state highway system within the corporate limits of a city or village, unless there is at least four hundred feet of clear vision in each direction of travel.

(b) If four hundred feet of clear vision in each direction of travel is not possible as determined by the school district, a school bus may stop to load or

unload pupils if there is proper signage installed indicating that a school bus stop is ahead.

(4) All pupils shall be received and discharged from the right front entrance of every school bus. If such pupils must cross a roadway, the bus driver shall instruct such pupils to cross in front of the school bus and the bus driver shall keep such school bus halted with the flashing red signal lights turned on and the stop signal arm extended until such pupils have reached the opposite side of such roadway.

(5) The driver of a vehicle upon a divided highway need not stop upon meeting or passing a school bus which is on a different roadway or when upon a freeway and such school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(6) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words school bus in letters not less than eight inches high.

(7) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or school-sponsored activities, all markings thereon indicating school bus shall be covered or concealed. The stop signal arm and system of flashing yellow warning signal lights and flashing red signal lights shall not be operable through the usual controls.

(8) When a school bus is (a) parked in a designated school bus loading area which is out of the flow of traffic and which is adjacent to a school site or (b) parked on a roadway which possesses more than one lane of traffic flowing in the same direction and which is adjacent to a school site, the bus driver shall engage only the hazard warning flasher lights when receiving or discharging pupils if a school bus loading area warning sign is displayed. Such signs shall not be directly attached to any school bus but shall be free standing and placed at the rear of a parked school bus or line of parked school buses. No school district shall utilize a school bus loading area warning sign unless such sign complies with the requirements of section 60-6,176.

Source: Laws 1973, LB 45, § 60; Laws 1974, LB 863, § 2; Laws 1977, LB 41, § 11; Laws 1987, LB 347, § 1; R.S.1943, (1988), § 39-660; Laws 1993, LB 370, § 271; Laws 1993, LB 575, § 10; Laws 2012, LB1039, § 2; Laws 2013, LB500, § 1.

(m) MISCELLANEOUS RULES

60-6,179.01 Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.

(1) This section does not apply to an operator of a commercial motor vehicle if section 60-6,179.02 applies.

(2) Except as otherwise provided in subsection (3) of this section, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.

(3) The prohibition in subsection (2) of this section does not apply to:

(a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or

(b) A person operating a motor vehicle in an emergency situation.

(4) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(6) For purposes of this section:

(a) Commercial motor vehicle has the same meaning as in section 75-362;

(b)(i) Handheld wireless communication device means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication.

(ii) Handheld wireless communication device includes, but is not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant, a pager, or a laptop computer.

(iii) Handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a handsfree wireless communication device; and

(c) Written communication includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

Source: Laws 2010, LB945, § 3; Laws 2012, LB751, § 44; Laws 2014, LB983, § 55.

Operative date March 29, 2014.

60-6,179.02 Operator of commercial motor vehicle; operator of certain passenger motor vehicle; operator of school bus; texting while driving prohibited; exception; use of handheld mobile telephone while driving prohibited; exception; violation; penalty.

(1)(a) Except as otherwise provided in subdivision (1)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall engage in texting while driving such vehicle.

(b) Texting while driving is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(2)(a) Except as otherwise provided in subdivision (2)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall use a handheld mobile telephone while driving

and no motor carrier shall allow or require its operators to use a handheld mobile telephone while driving such vehicle.

(b) Using a handheld mobile telephone is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(3)(a) Except as otherwise provided in subdivision (3)(b) of this section, no operator of a school bus shall engage in texting during school bus operations.

(b) Texting while driving is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(4)(a) Except as otherwise provided in subdivision (4)(b) of this section, no operator of a school bus shall use a handheld mobile telephone during school bus operations.

(b) Using a handheld mobile telephone is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be subject to disqualification as provided in section 60-4,168, shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182, and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(6) For purposes of this section:

(a) Commercial motor vehicle has the same meaning as in section 75-362;

(b) Driving means operating a commercial motor vehicle, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the operator moves the vehicle to the side of, or off, a highway and halts in a location where the vehicle can safely remain stationary;

(c) Electronic device includes, but is not limited to, a cellular telephone; a personal digital assistant; a pager; a computer; or any other device used to input, write, send, receive, or read text;

(d) Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service as defined in regulations of the Federal Communications Commission, 47 C.F.R. 20.3. Mobile telephone does not include two-way or citizens band radio services;

(e) School bus operations means the use of a school bus to transport school children or school personnel;

(f)(i) Texting means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access an Internet web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any

other form of electronic text retrieval or entry for present or future communication.

(ii) Texting does not include:

(A) Inputting, selecting, or reading information on a global positioning system or navigation system;

(B) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(C) Using a device capable of performing multiple functions, including, but not limited to, fleet management systems, dispatching devices, smartphones, citizens band radios, and music players, for a purpose other than texting; and

(g) Use a handheld mobile telephone means:

(i) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(ii) Dialing or answering a mobile telephone by pressing more than a single button; or

(iii) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position and restrained by a seat belt that is installed in accordance with 49 C.F.R. 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

Source: Laws 2012, LB751, § 45; Laws 2014, LB983, § 56.

Operative date March 29, 2014.

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,196.01 Driving under influence of alcoholic liquor or drug; additional penalty.

In addition to any other penalty provided for operating a motor vehicle in violation of section 60-6,196, if a person has a prior conviction as defined in section 60-6,197.02 for a violation punishable as a felony under section 60-6,197.03 and is subsequently found to have operated or been in the actual physical control of any motor vehicle when such person has (1) a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (2) a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class IIIA misdemeanor.

Source: Laws 2011, LB675, § 7.

60-6,197 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; advisement; effect; violation; penalty.

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have

been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

(4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and sections 60-498.01 to 60-498.04 upon return.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

Source: Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, p. 577; Laws 1963, c. 229, § 1, p. 716; Laws 1971, LB 948, § 2; Laws 1972, LB 1095, § 2; R.S.Supp.,1972, § 39-727.03; Laws 1982, LB 568, § 6; Laws 1986, LB 153, § 4; Laws 1987, LB 404, § 2; Laws 1987, LB 224, § 1; Laws 1988, LB 377, § 2; Laws 1990, LB 799, § 2; Laws 1992, LB 872, § 1; Laws 1992, LB 291, § 5; R.S.Supp.,1992, § 39-669.08; Laws 1993, LB 370, § 293; Laws

1993, LB 564, § 8; Laws 1996, LB 939, § 2; Laws 1998, LB 309, § 14; Laws 1999, LB 585, § 6; Laws 2000, LB 1004, § 2; Laws 2001, LB 38, § 48; Laws 2001, LB 773, § 16; Laws 2003, LB 209, § 12; Laws 2004, LB 208, § 11; Laws 2011, LB667, § 33.

Cross References

Applicability of statute to private property, see section 60-6,108.

Conviction of felony involving use of motor vehicle, transmittal of abstract, see section 60-497.02.

Ineligibility for pretrial diversion, see section 29-3604.

Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

Violation of ordinance, prosecuting attorney, consult victim, see section 29-120.

60-6,197.01 Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.

(1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subdivision and shall retain the ignition interlock permit and ignition interlock device for not less than a one-year period or the period of revocation ordered by the court, whichever is longer. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

Source: Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB736, § 7; Laws 2009, LB497, § 5; Laws 2010, LB924, § 3; Laws 2013, LB158, § 3.

60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in sections 60-6,196.01 and 60-6,197.03. For purposes of sentencing under sections 60-6,196.01 and 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the fifteen-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section

28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(b) Prior conviction includes any conviction under subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Fifteen-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last fifteen years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before January 1, 2012, but sentenced pursuant to section 60-6,197.03 for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

Source: Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB497, § 6; Laws 2011, LB667, § 34; Laws 2011, LB675, § 8.

60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to section 60-6,211.05 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a five-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and have an ignition interlock device installed on any

motor vehicle he or she owns or operates for at least one year. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, order payment of a one-

thousand-dollar fine and revoke the operator's license of such person for a period of at least eighteen months but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least eighteen months but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period issued pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine, confinement in the city or county jail for sixty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for ninety days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred twenty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony with a minimum sentence of two years' imprisonment, and the court

shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstinence from alcohol use at all times for no less than one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony with a minimum sentence of two years' imprisonment and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstinence from alcohol use at all times for no less than one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7; Laws 2010, LB924, § 4; Laws 2011, LB667, § 35; Laws 2011, LB675, § 9; Laws 2013, LB158, § 4.

60-6,197.05 Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.

Any period of revocation imposed by the court for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period of revocation imposed under sections 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit, arising from the same incident.

Source: Laws 2004, LB 208, § 15; Laws 2009, LB497, § 8; Laws 2011, LB667, § 36.

60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.

Notwithstanding the provisions of section 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or subdivision (3)(b) or (c) of section 28-394 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state.

Source: Laws 2006, LB 925, § 14; Laws 2011, LB667, § 37.

60-6,197.10 Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.

The Department of Motor Vehicles shall conduct an ongoing public education campaign to inform the residents of this state about the dangers and consequences of driving under the influence of alcohol or drugs in this state. Information shall include, but not be limited to, the criminal and administrative penalties for driving under the influence, any related laws, rules, instructions, and any explanatory matter. The department shall use its best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts for the public education campaign and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign. The information may be included in publications containing information related to other motor vehicle laws and shall be given wide distribution by the department.

Source: Laws 2011, LB667, § 38.

60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury means bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child has the same meaning as in section 28-396.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10; Laws 2011, LB667, § 39; Laws 2011, LB675, § 10.

Cross References

Conviction of felony involving use of vehicle, transmittal of abstract, see section 60-497.02.

60-6,209 License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles not more often than once per calendar year, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application and a nonrefundable application fee of one hundred dollars, the Director of Motor Vehicles shall review the application and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription;

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason; and

(f) Such person has agreed that, if the Board of Pardons reinstates such person's eligibility to apply for an ignition interlock permit, such person must provide proof, to the satisfaction of the department, that an ignition interlock

device has been installed and is maintained on one or more motor vehicles such person operates for the duration of the original fifteen-year revocation period and such person must operate only motor vehicles so equipped for the duration of the original fifteen-year revocation period.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery and, if such person is a holder of an ignition interlock permit, shall be conditioned for the duration of the original revocation period on such person's operation of only motor vehicles equipped with an ignition interlock device. If such person is convicted of any subsequent violation of section 60-6.196 or 60-6.197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 1992, LB 291, § 10; R.S.Supp.,1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB736, § 9; Laws 2014, LB998, § 12.

Effective date April 10, 2014.

60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.

(1) If an order is granted under section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of revocation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. The Department of Motor Vehicles shall issue an ignition interlock permit to the defendant under section 60-4,118.06 only upon sufficient proof that a defendant has installed an ignition interlock device on any motor vehicle that the defendant will operate during his or her release.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (8) of section 60-498.01. A person shall be eligible to be issued an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device if he or she is not subject to any other suspension, cancellation, required no-driving period, or period of revocation and has successfully completed the ignition interlock permit application process. The Department of Motor Vehicles shall review its records and the driving record abstract of any person who applies for an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device to determine (a) the applicant's eligibility for an ignition interlock permit, (b) the applicant's previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 or any previous administrative license revocation, if any, and (c) if the applicant is subject to any required no-drive periods before the ignition interlock permit may be issued.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow

operation by the defendant of only an ignition-interlock-equipped motor vehicle.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(6) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(7) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(8)(a) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid directly to the ignition interlock provider by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device.

(b) If the Department of Motor Vehicles has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section, such costs shall be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available, according to rules and regulations adopted and promulgated by the department. Such costs shall also be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available and if the court or the Board of Pardons, whichever is applicable, has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section. The Department of Motor Vehicles Ignition Interlock Fund is created. Money in the Department of Motor Vehicles Ignition Interlock Fund may be used for transfers to the General Fund at the direction of the Legislature. Any money in the Department of Motor Vehicles Ignition Interlock Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9)(a)(i) An ignition interlock service facility shall notify the appropriate district probation office or the appropriate court, as applicable, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(ii) An ignition interlock service facility shall notify the Department of Motor Vehicles, if the ignition interlock permit is issued pursuant to sections

60-498.01 to 60-498.04, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(10) Notwithstanding any other provision of law, the issuance of an ignition interlock permit by the Department of Motor Vehicles under section 60-498.01 or an order for the installation of an ignition interlock device and ignition interlock permit made pursuant to subsection (1) of this section as part of a conviction, as well as the administration of such court order by the Office of Probation Administration for the installation, maintenance, and removal of such device, as applicable, shall not be construed to create an order of probation when an order of probation has not been issued.

Source: Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10; Laws 2009, LB497, § 10; Laws 2010, LB924, § 5; Laws 2011, LB667, § 40; Laws 2012, LB751, § 46; Laws 2013, LB158, § 5; Laws 2013, LB199, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Limousine means a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses;

(d) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(e) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) Except as otherwise provided in this section, it is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186 or subsection (4) of this section, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

(4) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the Public Service Commission and subject to Chapter 75, article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this state if (a) the driver of the limousine or bus is prohibited from consuming alcoholic liquor and (b) alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

Source: Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6; Laws 2011, LB281, § 3.

60-6,211.11 Prohibited acts relating to ignition interlock device; violation; penalty.

(1) Except as provided in subsection (2) of this section, any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class I misdemeanor if he or she (a) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (b) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order.

(2) Any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class IV felony if he or she (a)(i) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (ii) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order and (b) operates the motor vehicle as described in subdivision (a)(i) or (ii) of this subsection when he or she has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(3) Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order or Department of Motor Vehicles order under which the device was installed shall be guilty of a Class III misdemeanor.

Source: Laws 2011, LB667, § 41; Laws 2014, LB998, § 13.
Effective date April 10, 2014.

(q) LIGHTING AND WARNING EQUIPMENT

60-6,232 Rotating or flashing amber light; when permitted.

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers, or (7) any motor vehicle operated by or for an emergency management worker as defined in section 81-829.39 or a storm spotter as defined in section 81-829.67 who is activated by a local emergency management organization.

Source: Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1; Laws 2011, LB573, § 1.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,256 Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.

(1) It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield of the motor vehicle without violating this section.

(2) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(3) Any person who violates this section is guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

- (a) Fifty dollars for the first offense;
- (b) One hundred dollars for a second offense; and
- (c) One hundred fifty dollars for a third and subsequent offense.

Source: Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352; Laws 2011, LB500, § 2.

Cross References

Interference with view of driver by passengers or load prohibited, see section 60-6,179.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,267 Use of restraint system or occupant protection system; when; information and education program.

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that all children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle.

(2) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that all children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

(3) Subsections (1) and (2) of this section apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(4) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other

medical reason, the provisions of subsection (1) or (2) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(5) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) or (2) of this section when operating such authorized emergency vehicles pursuant to their employment.

(6) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) or (2) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(7) The Department of Roads shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(8) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp., 1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009, LB219, § 1; Laws 2009, LB331, § 12; Laws 2011, LB67, § 1.

60-6,268 Use of restraint system or occupant protection system; violations; penalty; enforcement; when.

(1) A person violating any provision of subsection (1) or (2) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subsection (2) or (8) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

Source: Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3; Laws 2011, LB67, § 2.

(y) **SIZE, WEIGHT, AND LOAD**

60-6,288 Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense

Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and

Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Roads;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision, the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

(a) Highways with traffic lanes of ten feet or less;

(b) Highways upon which are located narrow bridges; and

(c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

Source: Laws 1933, c. 105, § 1, p. 425; C.S.Supp.,1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 220, § 1, p. 693; Laws 1963, c. 221, § 1, p. 697; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp.,1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978,

LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp., 1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB 226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB756, § 23; Laws 2014, LB1039, § 3.

Effective date July 18, 2014.

Cross References

Weighing stations, see sections 60-1301 to 60-1309.

60-6,288.01 Person moving certain buildings or objects; notice required; contents.

Any person moving a building or an object that, in combination with the transporting vehicle, is over fifteen feet, six inches high or wider than the roadway on a county or township road shall notify the local authority and the electric utility responsible for the infrastructure, including poles, wires, substations, and underground residential distribution cable boxes adjacent to or crossing the roadway along the route over which such building or object is being transported. Notification shall be made at least ten days prior to the move. Notification shall specifically describe the transporting vehicle, the width, length, height, and weight of the building or object to be moved, the route to be used, and the date and hours during which the building or object will be transported. Complying with the notification requirement of this section does not exempt the person from complying with any other federal, state, or local authority permit or notification requirements.

Source: Laws 2011, LB164, § 2.

60-6,289 Vehicles; height; limit; height of structure; damages.

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers or their representatives as authorized under section 60-6,382 shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met;

(e) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(f) Vehicles with a baled livestock forage load that comply with subsection (4) of section 60-6,305 when the overall height does not exceed fifteen feet, six inches.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

Source: Laws 1933, c. 105, § 2, p. 425; C.S.Supp.,1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp.,1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB756, § 24; Laws 2010, LB820, § 1; Laws 2014, LB1039, § 4.
Effective date July 18, 2014.

60-6,290 Vehicles; length; limit; exceptions.

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation;

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load; and

(v) A semitrailer operating in a truck-tractor single semitrailer combination, while transporting baled livestock forage, may exceed the forty-foot limitation but shall not exceed a length of fifty-nine feet six inches including load.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices; and

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

Source: Laws 1933, c. 102, § 1, p. 414; Laws 1933, c. 105, § 3, p. 425; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp.,1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c. 164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c.

222, § 1, p. 699; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; C.S.Supp.,1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 284, § 3; Laws 1980, LB 785, § 2; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB756, § 25; Laws 2012, LB740, § 1; Laws 2014, LB1039, § 5.

Effective date July 18, 2014.

60-6,291 Violations; penalty.

Any person who violates any provision of sections 60-6,288 to 60-6,290 or who drives, moves, causes, or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to width, length, or height as provided in such sections for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

Source: Laws 1933, c. 105, § 8, p. 431; Laws 1941, c. 76, § 1, p. 312; C.S.Supp.,1941, § 39-1037; R.S.1943, § 39-725; Laws 1949, c. 115, § 1, p. 309; Laws 1953, c. 134, § 6, p. 421; Laws 1955, c. 151, § 2, p. 449; R.R.S.1943, § 39-725; Laws 1974, LB 593, § 4; Laws 1977, LB 41, § 35; R.S.1943, (1988), § 39-6,188; Laws 1993, LB 370, § 387; Laws 1993, LB 121, § 207; Laws 1994, LB 884, § 81; Laws 2011, LB164, § 3.

60-6,297 Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.

(1) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed to a place of secure safekeeping by any wrecker or tow truck performing a wrecker or towing service.

(2) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a single vehicle that is disabled or wrecked when the single vehicle is towed by any wrecker or tow truck to a place for repair or to a point of storage.

(3)(a) Section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles permitted by the Department of Roads for overwidth, overheight, overlength, or overweight operation that is disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed if the vehicle or combination of vehicles is towed by any wrecker or tow truck performing a wrecker or towing service to the first or nearest place of secure safekeeping off the traveled portion of the highway that can accommodate the parking of such disabled vehicle or combination of vehicles.

(b) After the vehicle or combination of vehicles has been towed to a place of secure safekeeping, such vehicle or combination of vehicles shall then be

operated in compliance with section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294, or the vehicle or combination of vehicles shall acquire a special single trip permit from the department for the movement of the overwidth, overheight, overlength, or overweight vehicle or combination of vehicles beyond the first or nearest place of secure safekeeping to its intended destination.

(4) The owners, lessees, and operators of any wrecker or tow truck exceeding the width, height, length, or weight restrictions while towing a disabled or wrecked vehicle or combination of vehicles shall be jointly and severally liable for any injury or damages that result from the operation of the wrecker or tow truck while exceeding such restrictions.

(5) If a disabled or wrecked vehicle or combination of vehicles is towed, the wrecker or tow truck shall be connected with the air brakes and brake lights of the towed vehicle or combination of vehicles.

(6) For purposes of this section:

(a) Place of secure safekeeping means a location off the traveled portion of the highway that can accommodate the parking of the disabled or wrecked vehicle or combination of vehicles in order for the vehicle or combination of vehicles to be repaired or moved to a point of storage; and

(b) Wrecker or tow truck means an emergency commercial vehicle equipped, designed, and used to assist or render aid and transport or tow a disabled vehicle or combination of vehicles from a highway or right-of-way to a place of secure safekeeping.

Source: Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4; Laws 2011, LB35, § 1.

60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(1)(a) The Department of Roads or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both,

except that any combination with two or more cargo-carrying units, not including the truck-tractor, also known as a longer combination vehicle, may only operate for a distance up to seventy miles loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation. The permit shall include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days

during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars. Permits issued pursuant to such subdivision shall

be valid for thirty days and shall be renewable four times for a total number of days not to exceed one hundred fifty days per calendar year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Source: Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 176, § 1; Laws 1993, LB 370, § 394; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB820, § 2; Laws 2011, LB35, § 2; Laws 2012, LB841, § 1; Laws 2012, LB997, § 4; Laws 2013, LB117, § 1.

Cross References

Rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.

60-6,299 Permit to move building; limitations; application; Department of Roads; rules and regulations; violation; penalty.

(1) The Department of Roads may issue permits for vehicles moving a building or objects requiring specialized moving dollies. Such permits shall allow the vehicles transporting buildings or objects requiring specialized dollies to operate on highways under the jurisdiction of the department, excluding any portion of the National System of Interstate and Defense Highways. Such permit shall specify the maximum allowable width, length, height, and weight of the building to be transported, the route to be used, and the hours during which such building or object may be transported. Any vehicle moving a building or object requiring specialized moving dollies shall be escorted by another vehicle or vehicles in the manner determined by the department. Such vehicles shall travel at a speed which is not in excess of five miles per hour when carrying loads which are in excess of the maximum gross weight specified by law by more than twenty-five percent. The permit shall not be issued for travel on a state highway containing a bridge or structure which is structurally inadequate to carry such building or object as determined by the department. The department may prescribe conditions of operation of such vehicle when necessary to assure against damage to the road foundations, surfaces, or structures and require such security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(2) The application for any such permit shall (a) specifically describe the vehicle, (b) specifically describe the load to be moved, (c) include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move

and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities, and (d) whenever possible, describe the particular highways for which the permit is requested. The company or individual shall maintain a copy of the permit in each vehicle moving a building or object requiring specialized moving dollies which shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. The fee for such permit shall be ten dollars.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits. Such rules and regulations shall include, but not be limited to, driver qualifications, equipment selection, hours of operation, weather conditions, road conditions, determination of any damage caused to highways or bridges, cutting or trimming of trees, removal or relocation of signs or other property of the state, raising or lowering of electric supply and communication lines, and such other safety considerations as the department deems necessary.

(4) Any person who violates the terms of a permit issued pursuant to this section or otherwise violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1985, LB 553, § 1; R.S.1943, (1988), § 39-6,181.01; Laws 1993, LB 370, § 395; Laws 2012, LB997, § 5.

60-6,300 Vehicles; excess load prohibited; exception; violation; penalty.

(1) It shall be unlawful to operate upon the public highways of this state any truck, truck-tractor, or trailer that weighs in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds, but this section shall not apply to any truck, truck-tractor, or trailer being operated under a special permit issued pursuant to section 60-6,298 if the vehicle is properly registered pursuant to such section.

(2)(a) Any person operating any truck, truck-tractor, or trailer in violation of this section shall be guilty of a traffic infraction and shall, upon conviction, be fined twenty-five dollars for each one thousand pounds or fraction thereof in excess of the weight allowed to be carried under this section with tolerance.

(b) In lieu of issuing a citation to an operator under subdivision (2)(a) of this section, the Superintendent of Law Enforcement and Public Safety may assess the owner of the vehicle a civil penalty for each violation of this section in an amount equal to twenty-five dollars for each one thousand pounds or fraction thereof in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds. The superintendent shall issue an order imposing a penalty under this subdivision in the same manner as an order issued under section 75-369.04 and any rules and regulations adopted and promulgated under section 75-368 and any applicable federal rules and regulations.

Source: Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp.,1941, § 39-1193; R.S. 1943, § 39-723; Laws 1947, c. 147, § 2(4), p. 406; Laws 1953, c. 134, § 2, p. 418; Laws 1969, c. 318, § 2, p. 1155; C.S.Supp.,1972, § 39-723.03; Laws 1979, LB 287, § 2; Laws 1984, LB 726, § 3; Laws 1986, LB 783, § 1; R.S.1943, (1988), § 39-6,182; Laws 1993, LB 370, § 396; Laws 2013, LB398, § 1.

60-6,304 Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.

(1)(a) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(b) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(c) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(d) Any person who violates any provision of this subsection is guilty of a Class IV misdemeanor.

(2)(a) No person operating any vehicle that contained livestock, but still contains the manure or urine of livestock, on any highway located within the corporate limits of a city of the metropolitan class, shall spill manure or urine from the vehicle.

(b) Any person who violates this subsection is guilty of a Class IV misdemeanor and shall be assessed a minimum fine of at least two hundred fifty dollars.

Source: Laws 1969, c. 304, § 1, p. 1095; C.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1; Laws 2014, LB174, § 2.
Effective date July 18, 2014.

(ee) SPECIAL RULES FOR MINIBIKES AND
OTHER OFF-ROAD VEHICLES

60-6,348 Minibikes and off-road designed vehicles; use; emergencies; parades.

Minibikes and all off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawnmowers, garden tractors, and snowmobiles, shall be exempt from the provisions of sections

60-678, 60-6,351 to 60-6,353, 60-6,380, and 60-6,381 during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational, or community service organization.

Source: Laws 1971, LB 644, § 7; Laws 1972, LB 1196, § 6; Laws 1987, LB 80, § 12; R.S.1943, (1988), § 60-2102; Laws 1993, LB 370, § 444; Laws 2011, LB289, § 33; Laws 2012, LB1155, § 21.

60-6,349 Minibikes and similar vehicles; sale; notice.

All minibikes and similar two-wheeled, three-wheeled, and four-wheeled miniature vehicles offered for sale in this state shall bear the following notice to the customer and user: This vehicle as manufactured or sold is for off-road use only. This section shall not apply to a golf car vehicle or a low-speed vehicle, as applicable to its design, or to an electric personal assistive mobility device.

Source: Laws 1971, LB 644, § 8; Laws 1972, LB 1196, § 7; R.S.1943, (1988), § 60-2103; Laws 1993, LB 370, § 445; Laws 2002, LB 1105, § 464; Laws 2011, LB289, § 34; Laws 2012, LB1155, § 22.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355 All-terrain vehicle, defined; utility-type vehicle, defined.

(1) For purposes of sections 60-6,355 to 60-6,362:

(a) All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of twelve hundred pounds or less, (iii) travels on three or more nonhighway tires, and (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is seventy-four inches in width or less, (B) is not more than one hundred eighty inches, including the bumper, in length, (C) has a dry weight of two thousand pounds or less, (D) travels on four or more nonhighway tires.

(ii) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

Source: Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250; Laws 2010, LB650, § 39; Laws 2012, LB1155, § 24; Laws 2013, LB223, § 3; Laws 2014, LB814, § 7.
Operative date October 1, 2014.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

60-6,378 Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.

(1)(a) A driver in a vehicle on a controlled-access highway approaching or passing a stopped authorized emergency vehicle or road assistance vehicle which makes use of proper audible or visual signals shall proceed with due care and caution as described in subdivision (b) of this subsection.

(b) On a controlled-access highway with at least two adjacent lanes of travel in the same direction on the same side of the highway where a stopped authorized emergency vehicle or road assistance vehicle is using proper audible or visual signals, the driver of the vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle unless directed otherwise by a peace officer or other authorized emergency personnel. If moving into another lane is not possible because of weather conditions, road conditions, or the immediate presence of vehicular or pedestrian traffic or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway where such a stopped authorized emergency vehicle or road assistance vehicle is located, the driver of the approaching or passing vehicle shall reduce his or her speed, maintain a safe speed with regard to the location of the stopped authorized emergency vehicle or road assistance vehicle, the weather conditions, the road conditions, and vehicular or pedestrian traffic, and proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

(c) Any person who violates this subsection is guilty of a traffic infraction for a first offense and Class IIIA misdemeanor for a second or subsequent offense.

(2) The Department of Roads shall erect and maintain or cause to be erected and maintained signs giving notice of subsection (1) of this section along controlled-access highways.

(3) Enforcement of subsection (1) of this section shall not be accomplished using simulated situations involving an authorized emergency vehicle or a road assistance vehicle.

(4) This section does not relieve the driver of an authorized emergency vehicle or a road assistance vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(5) For purposes of this section, road assistance vehicle includes a vehicle operated by the Department of Roads, a Nebraska State Patrol motorist assistance vehicle, a United States Department of Transportation registered towing or roadside assistance vehicle, and a utility service vehicle operated by a utility company. A road assistance vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

Source: Laws 2009, LB92, § 2; Laws 2013, LB154, § 1.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

60-6,380 Low-speed vehicle; restrictions on use.

A low-speed vehicle may be operated on any highway on which the speed limit is not more than thirty-five miles per hour. A low-speed vehicle may cross a highway on which the speed limit is more than thirty-five miles per hour. Nothing in this section shall prevent a county, city, or village from adopting

more stringent ordinances governing low-speed vehicle operation if the governing body of the county, city, or village determines that such ordinances are necessary in the interest of public safety. Any person operating a low-speed vehicle as authorized under this section shall have a valid Class O operator's license and shall have liability insurance coverage for the low-speed vehicle. The Department of Roads may prohibit the operation of low-speed vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

Source: Laws 2011, LB289, § 32.

(II) SPECIAL RULES FOR GOLF CAR VEHICLES

60-6,381 Golf car vehicles; city, village, or county; operation authorized; Department of Roads; power to prohibit operation.

(1) A city or village may adopt an ordinance authorizing the operation of golf car vehicles within the corporate limits of the city or village if the operation is on streets adjacent and contiguous to a golf course.

(2) A county board may adopt a resolution authorizing the operation of golf car vehicles within the county if the operation is on roads adjacent and contiguous to a golf course.

(3) Any person operating a golf car vehicle as authorized under this section shall have a valid Class O operator's license and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The Department of Roads may prohibit the operation of golf car vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

(4) For purposes of this section:

(a) Road means a public way for the purposes of vehicular travel, including the entire area within the right-of-way; and

(b) Street means a public way for the purposes of vehicular travel in a city or village and includes the entire area within the right-of-way.

Source: Laws 2012, LB1155, § 23.

(mm) FARM EQUIPMENT DEALERS

60-6,382 Farm equipment dealers; farm equipment haulers act as representative; conditions; signed statement; contents.

Farm equipment dealers may allow farm equipment haulers to act as their representative when hauling farm equipment to or from the dealer's place of business. Farm equipment haulers shall carry in the motor vehicle hauling the farm equipment a signed statement from the farm equipment dealer stating that they are acting as a representative of the farm equipment dealer. The statement shall be dated and valid for ninety days and shall be subject to inspection by any peace officer. The statement shall indicate the name of the farm equipment dealer, the name of the hauler, and that the dealer authorizes the hauler to act as its representative for purposes of complying with width, height, and length limitations. Nothing in this section shall require farm equipment dealers to provide insurance coverage for farm equipment haulers.

Source: Laws 2014, LB1039, § 2.

Effective date July 18, 2014.

ARTICLE 14

MOTOR VEHICLE INDUSTRY LICENSING

Section

- 60-1401. Act, how cited; applicability of amendments.
- 60-1403.01. License required; restriction on issuance; exception.
- 60-1409. Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.
- 60-1417.02. Auction; registration of seller; exception.
- 60-1420. Franchise; termination; noncontinuance; change community; hearing; when required.
- 60-1424. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.
- 60-1425. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.
- 60-1427. Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.
- 60-1429. Franchise; termination; noncontinuance; change community; additional dealership; acts not constituting good cause.
- 60-1436. Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.
- 60-1437. Manufacturer or distributor; prohibited acts with respect to new motor vehicles.
- 60-1438. Manufacturer or distributor; warranty obligation; prohibited acts.
- 60-1438.01. Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.
- 60-1439.01. Motor vehicle provided by motor vehicle dealer; motor vehicle insurance policies; primary coverage; secondary coverage.

60-1401 Act, how cited; applicability of amendments.

Sections 60-1401 to 60-1440 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

Any amendments to the act shall apply to franchises subject to the act which are entered into, amended, altered, modified, renewed, or extended after the date of the amendments to the act except as otherwise specifically provided in the act.

All amendments to the act shall apply upon the issuance or renewal of a dealer's or manufacturer's license.

Source: Laws 2010, LB816, § 12; Laws 2011, LB477, § 1; Laws 2013, LB133, § 1.

60-1403.01 License required; restriction on issuance; exception.

(1) No person shall engage in the business as, serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, dealer's agent, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the Motor Vehicle Industry Regulation Act. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws.

(2) A license issued under the act shall authorize the holder thereof to engage in the business or activities permitted by the license subject to the act and the rules and regulations adopted and promulgated by the board under the act.

(3) This section shall not apply to a licensed real estate salesperson or broker who negotiates for sale or sells a trailer for any individual who is the owner of not more than two trailers.

(4) This section shall not restrict a licensed motor vehicle dealer from conducting an auction as provided in subsection (5) of section 60-1417.02.

Source: Laws 1971, LB 768, § 5; Laws 1972, LB 1335, § 2; Laws 1974, LB 754, § 3; Laws 1983, LB 234, § 20; Laws 2000, LB 1018, § 2; Laws 2003, LB 498, § 2; Laws 2010, LB816, § 56; Laws 2013, LB164, § 1.

60-1409 Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.

The Nebraska Motor Vehicle Industry Licensing Fund is created. All fees collected under the Motor Vehicle Industry Regulation Act shall be remitted by the board, as collected, to the State Treasurer for credit to the fund. Such fund shall be appropriated by the Legislature for the operations of the Nebraska Motor Vehicle Industry Licensing Board and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairperson of the board or the executive secretary, except that transfers from the fund to the General Fund may be made at the direction of the Legislature through June 30, 2011. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund, and all money deposited in the Nebraska Motor Vehicle Industry Licensing Fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall not be required to expend any funds to any person or any other governmental agency.

Any money in the Nebraska Motor Vehicle Industry Licensing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund shall be audited by the Auditor of Public Accounts at such time as he or she determines necessary.

Source: Laws 1957, c. 280, § 9, p. 1019; Laws 1969, c. 584, § 60, p. 2382; Laws 1972, LB 1335, § 5; Laws 1974, LB 754, § 8; Laws 1978, LB 248, § 6; Laws 1995, LB 7, § 63; Laws 2002, LB 1310, § 6; Laws 2009, First Spec. Sess., LB3, § 36; Laws 2010, LB816, § 65; Laws 2011, LB337, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

60-1417.02 Auction; registration of seller; exception.

(1) Except as otherwise provided in subsection (5) of this section, any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act

shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board as prescribed in section 60-1413.

(5) A licensed motor vehicle dealer may conduct an auction of excess inventory of used vehicles without being licensed as an auction dealer or registered under this section if the auction conforms to the requirements of this subsection. The licensed motor vehicle dealer shall conduct the auction upon the licensed premises of the dealer, shall sell only used motor vehicles, trailers, or manufactured homes, shall sell only to motor vehicle dealers licensed in Nebraska, shall not sell any vehicles on consignment, and shall not sell any vehicles directly to the public.

Source: Laws 1984, LB 825, § 29; Laws 1999, LB 340, § 2; Laws 2010, LB816, § 71; Laws 2013, LB164, § 2.

60-1420 Franchise; termination; noncontinuance; change community; hearing; when required.

(1) Except as provided in subsection (2) or (3) of this section, no franchisor shall terminate or refuse to continue any franchise or change a franchisee's community unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination, noncontinuance, or change;

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) Upon termination or noncontinuance, the franchisor is willing and able to comply with section 60-1430.02.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer

dealer is revoked pursuant to the Motor Vehicle Industry Regulation Act, or (c) upon a mutual written agreement of the franchisor and franchisee.

(3) A franchisor may change a franchisee's community without a hearing if the franchisor notifies the franchisee of the proposed change at least thirty days before the change, provides the franchisee an opportunity to object, and enters into an agreement with the franchisee regarding the change of the franchisee's community. If no agreement is reached, the franchisor shall comply with sections 60-1420 to 60-1435 prior to changing the franchisee's community.

Source: Laws 1971, LB 768, § 20; Laws 1987, LB 327, § 1; Laws 1989, LB 280, § 5; Laws 2010, LB816, § 72; Laws 2011, LB477, § 2.

60-1424 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.

If a franchisor seeks to terminate or not continue any franchise or change a franchisee's community, or seeks to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle or trailer dealership of the same line-make, the franchisor shall file an application with the board for permission to terminate or not continue the franchise, to change a franchisee's community, or to enter into a franchise for additional representation of the same line-make in that community, except that no application needs to be filed to change a franchisee's community if an agreement has been entered into as provided in subsection (3) of section 60-1420.

Source: Laws 1971, LB 768, § 24; Laws 2011, LB477, § 3.

60-1425 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.

Upon receiving an application under section 60-1424, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchisor seeks to terminate, not continue, or change. If the application requests permission to change a franchisee's community or establish an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchisor's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate. Any person who can show an interest in the application may become a party to the hearing, whether or not he or she receives notice, but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise, the change in community, or the establishment of an additional motor vehicle dealership.

Source: Laws 1971, LB 768, § 25; Laws 2011, LB477, § 4.

60-1427 Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.

Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

Source: Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75; Laws 2011, LB477, § 5.

60-1429 Franchise; termination; noncontinuation; change community; additional dealership; acts not constituting good cause.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuation of a franchise, for changing the franchisee's community, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

- (1) The sole fact that the franchisor desires further penetration of the market;
- (2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or
- (3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, trailer, vehicle parts or accessories, or other commodity or service not ordered by the franchisee.

Source: Laws 1971, LB 768, § 29; Laws 1984, LB 825, § 32; Laws 1989, LB 280, § 6; Laws 2011, LB477, § 6.

60-1436 Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.

A manufacturer or distributor shall not require or coerce any new motor vehicle dealer in this state to do any of the following:

- (1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer or retain any part or accessory that the dealer has not sold within twelve months if the part or accessory was not obtained through a specific order initiated by the dealer but was specified for, sold to, and shipped to the dealer pursuant to an automatic ordering system, if

the part or accessory is in the condition required for return, and if the part or accessory is returned within thirty days after such twelve-month period. For purposes of this subdivision, automatic ordering system means a computerized system required by the franchisor, manufacturer, or distributor that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory returned under this subdivision. In determining whether parts or accessories in the dealer's inventory were specified and sold under an automated ordering system, the parts and accessories in the dealer's inventory are presumed to be the most recent parts and accessories that were sold to the dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Offer or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

(4) Join, contribute to, or affiliate with an advertising association;

(5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(7) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer;

(8) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by the act or require any controversy between the new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer;

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable, including unreasonably requiring a franchisee to establish, maintain, or continue exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business consid-

erations. In making that determination, the franchisor shall take into consideration the franchisee's compliance with facility requirements as required by the franchise agreement. The franchisor shall have the burden of proving that business considerations justify exclusivity;

(10) Release, convey, or otherwise provide customer information if to do so is unlawful or if the customer objects in writing to doing so, unless the information is necessary for the manufacturer, factory branch, or distributor to meet its obligations to consumers or the new motor vehicle dealer including vehicle recalls or other requirements imposed by state or federal law;

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section. A manufacturer, importer, or distributor may not share, sell, or transfer customer information, obtained from a dealer and not otherwise publicly available, to other dealers franchised by the manufacturer while the originating dealer is still a franchised dealer of the manufacturer unless otherwise agreed to by the originating dealer. A manufacturer, importer, or distributor may not use any nonpublic personal information, as that term is used in 16 C.F.R. part 313, which is obtained from a dealer unless such use falls within one or more of the exceptions to opt out requirements under 16 C.F.R. 313.14 or 313.15;

(12) Establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer or distributor, whether by agreement, program, incentive provision, or otherwise;

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring an exclusive sales area within the facilities that are in compliance with reasonable requirements for the facilities if the dealer complies with subdivision (9) of this section; or

(14)(a) Enter into any agreement with a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates which gives site control of the premises of the dealer that does not terminate upon the occurrence of any of the following events:

(i) The right of the franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor branch to another; or

(ii) The final termination of the dealer's franchise for any reason unless an agreement for site control is voluntarily negotiated separately and apart from the franchise agreement and consideration has been offered by the manufacturer and accepted by the dealer. If a dealer voluntarily terminates and has entered into a separately negotiated site control agreement, the agreement may survive the termination if the agreement clearly states that fact.

(b) For purposes of this subdivision, site control means the contractual right to control in any way the commercial use and development of the premises upon which a dealer's business operations are located, including the right to approve of additional or different uses for the property beyond those of its

franchise, the right to lease or sublease the dealer's property, or the right or option to purchase the dealer's property.

Any action prohibited for a manufacturer or distributor under the Motor Vehicle Industry Regulation Act is also prohibited for a subsidiary which is wholly owned or controlled by contract by a manufacturer or distributor or in which a manufacturer or distributor has more than a ten percent ownership interest, including a financing division.

Source: Laws 1984, LB 825, § 19; Laws 1999, LB 632, § 7; Laws 2010, LB816, § 81; Laws 2011, LB477, § 7.

60-1437 Manufacturer or distributor; prohibited acts with respect to new motor vehicles.

In addition to the restrictions imposed by section 60-1436, a manufacturer or distributor shall not:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor;

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor or, if a line-make is allocated among new motor vehicle dealers, refuse to disclose to any new motor vehicle dealer that handles the same line-make the system of allocation, including, but not limited to, a complete breakdown by model, and a concise listing of dealerships with an explanation of the derivation of the allocation system, including its mathematical formula in a clear and comprehensible form;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(a) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(b) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(c) Any increase in transportation charges due to an increase in rates charged by a common carrier or other transporter;

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

(6) Fail to offer dealers of a specific line-make a new franchise agreement containing substantially similar terms and conditions for sales of the line-make if the ownership of the manufacturer or distributor changes or there is a change in the plan or system of distribution;

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:

(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in this state on substantially comparable terms;

(9) Refuse to pay a new motor vehicle dealer for sales incentives, service incentives, rebates, or other forms of incentive compensation within thirty days after their approval by the manufacturer or distributor. The manufacturer or distributor shall either approve or disapprove each claim by the dealer within thirty days after receipt of the claim in a proper form generally used by the manufacturer or distributor. Any claims not specifically disapproved in writing within thirty days after receipt shall be considered to be approved;

(10) Perform an audit to confirm payment of a sales incentive, service incentive, rebate, or other form of incentive compensation more than twelve months after the date of payment of the claim or twelve months after the end of the incentive program by the new motor vehicle dealer unless the claim is fraudulent;

(11) Reduce the amount to be paid to a new motor vehicle dealer for a sales incentive, service incentive, rebate, or other form of incentive compensation or charge back a new motor vehicle dealer subsequent to the payment of the claim for a sales incentive, service incentive, rebate, or other form of incentive compensation unless the manufacturer or distributor shows that the claim lacks required documentation or is alleged to be false, fraudulent, or based on a misrepresentation.

A manufacturer or distributor may not deny a claim based solely on a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error, that does not put into question the legitimacy of the claim. No reduction in the amount to be paid to the new motor vehicle dealer and no charge back subsequent to the payment of a claim may be made until the new motor vehicle dealer has had notice and an opportunity to correct any deficiency and resubmit the claim and to participate in all franchisor internal appeal processes as well as all available legal processes. If a charge back is the subject of adjudication, internal appeal, mediation, or arbitration, no charge back shall be made until, in the case of an adjudication or legal action, a final order has been issued.

A claim for reimbursement by the manufacturer or distributor of sums due following an audit must be presented to the dealer within ninety days after completion of the audit of the item subject to the claim. A manufacturer or distributor may not setoff or otherwise take control over funds owned or under the control of the new motor vehicle dealer or which are in an account designated for the new motor vehicle dealer when such action is based upon the findings of an audit or other claim with respect thereto until a final decision

is issued with respect to any challenge or appeal by either party of any such audit or claim.

Any ambiguity or inconsistency in submission guidelines shall be construed against the manufacturer or distributor;

(12) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract, extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons; or

(13) Prohibit a franchisee from acquiring a line-make of new motor vehicles solely because the franchisee owns or operates a franchise of the same line-make in a contiguous market.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

Source: Laws 1984, LB 825, § 20; Laws 1999, LB 632, § 8; Laws 2010, LB816, § 82; Laws 2011, LB477, § 8; Laws 2012, LB896, § 1.

60-1438 Manufacturer or distributor; warranty obligation; prohibited acts.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles and all parts and components included in or manufactured for installation in the motor vehicles of the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2)(a) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders

for routine maintenance, such as tire repair or replacement and oil and fluid changes, shall not be used.

(b) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to establish that the denial was reasonable. If the board determines that the denial was not reasonable, the denial shall be deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. Only retail sales not involving warranty repairs or parts supplied for routine vehicle maintenance shall be considered in calculating average percentage markup. No manufacturer shall require a dealer to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not request a change in the average percentage markup more than twice in one calendar year.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) A dealer's claim for warranty compensation may be denied only if:

(a) The dealer's claim is based on a nonwarranty repair;

(b) The dealer lacks documentation for the claim;

(c) The dealer fails to comply with specific substantive terms and conditions of the franchisor's warranty compensation program; or

(d) The manufacturer has a bona fide belief based on competent evidence that the dealer's claim is intentionally false, fraudulent, or misrepresented.

(5) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be made within six months after completing the work and shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the

form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for one year after payment, except that if the manufacturer has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent, the manufacturer has the right to audit the claims for four years after payment. For purposes of this subsection, reasonable cause means a bona fide belief based upon evidence that the issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. As a result of an audit authorized under this subsection, the manufacturer has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. The requirement to approve and pay the claim within thirty days after receipt of the claim does not preclude chargebacks for any fraudulent claim previously paid. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(6) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

(7) This section does not apply to recreational vehicles.

Source: Laws 1984, LB 825, § 21; Laws 1991, LB 393, § 1; Laws 2003, LB 371, § 1; Laws 2010, LB816, § 83; Laws 2011, LB477, § 9; Laws 2013, LB165, § 1.

60-1438.01 Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.

(1) For purposes of this section, manufacturer or distributor includes (a) a factory representative or a distributor representative or (b) a person who is affiliated with a manufacturer or distributor or who, directly or indirectly through an intermediary, is controlled by, or is under common control with, the manufacturer or distributor. A person is controlled by a manufacturer or distributor if the manufacturer or distributor has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person. A franchise agreement with a Nebraska-licensed dealer which conforms to and is subject to the Motor Vehicle Industry Regulation Act is not control for purposes of this section.

(2) Except as provided in this section, a manufacturer or distributor shall not directly or indirectly:

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

(b) Operate or control a franchise, franchisee, or consumer care or service facility; or

(c) Act in the capacity of a franchisee or motor vehicle dealer.

(3) A manufacturer or distributor may own an interest in a franchisee or otherwise control a franchise for a period not to exceed twelve months after the date the manufacturer or distributor acquires the franchise if:

(a) The person from whom the manufacturer or distributor acquired the franchise was a franchisee; and

(b) The franchise is for sale by the manufacturer or distributor.

(4) For purposes of broadening the diversity of its franchisees and enhancing opportunities for qualified persons who lack the resources to purchase a franchise outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a franchise if the manufacturer's or distributor's participation in the franchise is in a bona fide relationship with a franchisee and the franchisee:

(a) Has made a significant investment in the franchise, which investment is subject to loss;

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

(5) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit set forth in subsection (3) of this section. An extension may not exceed twelve months. An application for an extension after the first extension is granted is subject to protest by a franchisee of the same line-make whose franchise is located in the same community as the franchise owned or controlled by the manufacturer or distributor.

(6) The prohibition in subdivision (2)(b) of this section shall not apply to any manufacturer of manufactured housing, recreational vehicles, or trailers.

Source: Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84; Laws 2011, LB477, § 10.

60-1439.01 Motor vehicle provided by motor vehicle dealer; motor vehicle insurance policies; primary coverage; secondary coverage.

During the time when an insured person is operating a motor vehicle provided by a motor vehicle dealer for use while the insured person's motor vehicle is being serviced, repaired, or inspected by the motor vehicle dealer, when both the insured person's and motor vehicle dealer's motor vehicle insurance policies have a mutually repugnant clause regarding primary coverage, the insured person's motor vehicle insurance policy shall provide primary coverage for the motor vehicle and the motor vehicle insurance policy of the motor vehicle dealer shall provide secondary coverage until the motor vehicle is returned to the motor vehicle dealer. This section only applies to the loan of a motor vehicle by a motor vehicle dealer which occurs without financial remuneration in the form of a fee or lease charge paid directly by the insured person operating the motor vehicle. Payments made by any third party to a motor vehicle dealer, or similar reimbursements, shall not be considered payments directly from the insured person operating the motor vehicle.

Source: Laws 2013, LB133, § 2.

ARTICLE 15

DEPARTMENT OF MOTOR VEHICLES

Section

60-1505. Vehicle Title and Registration System Replacement and Maintenance Cash Fund; created; use; investment.

60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.

60-1505 Vehicle Title and Registration System Replacement and Maintenance Cash Fund; created; use; investment.

The Vehicle Title and Registration System Replacement and Maintenance Cash Fund is hereby created. The fund shall be administered by the Department of Motor Vehicles. The fund shall be used by the department to pay for costs associated with the acquisition, implementation, maintenance, support, upgrades, and replacement of the vehicle titling and registration computer system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2014, LB906, § 2.
Effective date March 30, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

60-1515 Department of Motor Vehicles Cash Fund; use; legislative intent.

(1) The Legislature hereby finds and declares that a statewide system for the collection, storage, and transfer of data on vehicle titles and registration and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in vehicle titling and registration. The Legislature hereby finds and declares that the electronic issuance of operators' licenses and state identification cards using a digital system as described in section 60-484.01 and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in issuing operators' licenses and state identification cards.

(2) It is therefore the intent of the Legislature that the Department of Motor Vehicles shall use a portion of the fees appropriated by the Legislature to the Department of Motor Vehicles Cash Fund as follows:

(a) To pay for the cost of issuing motor vehicle titles and registrations on a system designated by the department. The costs shall include, but not be limited to, software and software maintenance, programming, processing charges, and equipment including such terminals, printers, or other devices as deemed necessary by the department after consultation with the county to support the issuance of motor vehicle titles and registrations. The costs shall not include the cost of county personnel or physical facilities provided by the counties;

(b) To fund the centralization of renewal notices for motor vehicle registration and to furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator's license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance data base created under section 60-3,136.

Source: Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258; Laws 2013, LB207, § 6.

ARTICLE 18 CAMPER UNITS

Section

60-1803. Permit; application; contents; fee.

60-1807. Permit; renewal; issuance; receipt required.

60-1803 Permit; application; contents; fee.

Every owner of a camper unit shall make application for a permit to the county treasurer of the county in which such owner resides or is domiciled or conducts a bona fide business, or if such owner is not a resident of this state, such application shall be made to the county treasurer of the county in which such owner actually lives or conducts a bona fide business, except as otherwise expressly provided. Any person, firm, association, or corporation who is neither a resident of this state nor domiciled in this state, but who desires to obtain a permit for a camper unit owned by such person, firm, association, or corporation, may register the same in any county of this state. The application shall contain a statement of the name, post office address, and place of residence of the applicant, a description of the camper unit, including the name of the maker, the number, if any, affixed or assigned thereto by the manufacturer, the weight, width, and length of the vehicle, the year, the model, and the trade name or other designation given thereto by the manufacturer, if any. Camper unit permits required by sections 60-1801 to 60-1808 shall be issued by the county treasurer in the same manner as registration certificates as provided in the Motor Vehicle Registration Act except as otherwise provided in sections 60-1801 to 60-1808. Every applicant for a permit, at the time of making such application, shall exhibit to the county treasurer evidence of ownership of such camper unit. Contemporaneously with such application, the applicant shall pay a permit fee in the amount of two dollars which shall be distributed in the same manner as all other motor vehicle license fees. Upon proper application being made and the payment of the permit fee, the applicant shall be issued a permit.

Source: Laws 1969, c. 627, § 3, p. 2526; Laws 1993, LB 112, § 40; Laws 1995, LB 37, § 11; Laws 1997, LB 271, § 34; Laws 2005, LB 274, § 260; Laws 2012, LB801, § 95.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-1807 Permit; renewal; issuance; receipt required.

In issuing permits or renewals under sections 60-1801 to 60-1808, the county treasurer shall neither receive nor accept such application nor permit fee nor issue any permit for any such camper unit unless the applicant first exhibits proof by receipt or otherwise (1) that he or she has paid all applicable taxes and fees upon such camper unit based on the computation thereof made in the year preceding the year for which such application for permit is made, (2) that he or she was the owner of another camper unit or other motor vehicles on which he or she paid the taxes and fees during such year, or (3) that he or she owned no camper unit or other motor vehicle upon which taxes and fees might have been imposed during such year.

Source: Laws 1969, c. 627, § 7, p. 2528; Laws 1997, LB 271, § 35; Laws 2005, LB 274, § 262; Laws 2012, LB801, § 96.

ARTICLE 19 ABANDONED MOTOR VEHICLES

Section

60-1901. Abandoned vehicle, defined.

60-1901 Abandoned vehicle, defined.

(1) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;

(b) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(e) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(f) If removed from private property by a municipality pursuant to a municipal ordinance.

(2) An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle:

(a) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(b) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(c) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(e) If removed from private property by a municipality pursuant to a municipal ordinance.

(3) A mobile home is an abandoned vehicle if left in place on private property for more than thirty days after a local governmental unit, pursuant to an ordinance or resolution, has sent a certified letter to each of the last-registered owners and posted a notice on the mobile home, stating that the mobile home is subject to sale or auction or vesting of title as set forth in section 60-1903.

(4) For purposes of this section:

(a) Mobile home means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit, and shall include a manufactured home as defined in section 71-4603. Mobile home does not include a mobile home or manufactured home for which an affidavit of affixture has been recorded pursuant to section 60-169;

(b) Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and

(c) Private property means any privately owned property which is not included within the definition of public property.

(5) No motor vehicle subject to forfeiture under section 28-431 shall be an abandoned vehicle under this section.

Source: Laws 1971, LB 295, § 1; Laws 1999, LB 90, § 1; Laws 2004, LB 560, § 41; Laws 2005, LB 274, § 263; Laws 2009, LB60, § 1; Laws 2010, LB650, § 46; Laws 2014, LB1044, § 1.
Effective date July 18, 2014.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 21

MINIBIKES OR MOTORCYCLES

(b) MOTORCYCLE SAFETY EDUCATION

Section

- 60-2120. Act, how cited.
- 60-2121. Terms, defined.
- 60-2125. Motorcycle safety courses; requirements.
- 60-2126. Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.
- 60-2127. Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.
- 60-2128. Motorcycle safety instructor preparation course; department; duties.
- 60-2129. Motorcycle trainers; requirements; certificates; person certified by another state; how treated.
- 60-2130. Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.

Section

| | |
|-------------|---|
| 60-2131. | Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure. |
| 60-2132. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2132.01. | Motorcycle Safety Education Fund; transfers. |
| 60-2133. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2134. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2135. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2136. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2137. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2138. | Repealed. Laws 2011, LB 170, § 17. |
| 60-2139. | Rules and regulations. |

(b) MOTORCYCLE SAFETY EDUCATION

60-2120 Act, how cited.

Sections 60-2120 to 60-2139 shall be known and may be cited as the Motorcycle Safety Education Act.

Source: Laws 1986, LB 1004, § 2; Laws 1989, LB 25, § 2; Laws 2011, LB170, § 4.

60-2121 Terms, defined.

For purposes of the Motorcycle Safety Education Act, unless the context otherwise requires:

- (1) Department means the Department of Motor Vehicles;
- (2) Director means the Director of Motor Vehicles;
- (3) Driving course means a driving pattern used to aid students in learning the skills needed to safely operate a motorcycle as part of a motorcycle safety course;
- (4) Motorcycle safety course means a curriculum of study which has been approved by the department designed to teach drivers the skills and knowledge to safely operate a motorcycle;
- (5) Motorcycle safety instructor means any person who has successfully passed a motorcycle safety instructor's course curriculum and is certified by the department to teach a motorcycle safety course; and
- (6) Motorcycle trainer means a person who is qualified and certified by the department to teach another person to become a certified motorcycle safety instructor in this state.

Source: Laws 1981, LB 22, § 1; Laws 1984, LB 1089, § 3; R.S.1943, (1984), § 60-2109; Laws 1986, LB 1004, § 3; Laws 2002, LB 93, § 5; Laws 2011, LB170, § 5.

60-2125 Motorcycle safety courses; requirements.

(1) The department may adopt and promulgate rules and regulations establishing minimum requirements for both basic and advanced motorcycle safety courses. The courses shall be designed to develop, instill, and improve the knowledge and skills necessary for safe operation of a motorcycle.

(2) The motorcycle safety courses shall be designed to teach either a novice motorcycle rider knowledge and basic riding skills or to refresh the knowledge and riding skills of motorcycle riders necessary for the safe and legal operation

of a motorcycle on the highways of this state. Every motorcycle safety course shall be conducted at a site with room for a driving course designed to allow motorcycle riders to practice the knowledge and skills necessary for safe motorcycle operation.

Source: Laws 1981, LB 22, § 2; R.S.1943, (1984), § 60-2110; Laws 1986, LB 1004, § 7; Laws 2011, LB170, § 6.

60-2126 Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.

(1) A school, business, or organization may apply to the department to provide a motorcycle safety course or courses in this state. Prospective providers of such course or courses shall submit an application for approval of such course or courses to the director. The application shall include a list of instructors of the course or courses. Such instructors shall be or shall become motorcycle safety instructors certified by the department prior to teaching any motorcycle safety course in this state. Applications for certification of motorcycle safety instructors may be included along with an application for approval of a motorcycle safety course or courses. The director shall approve such course if it meets the requirements set forth by the department by rule and regulation and will be taught by a certified motorcycle safety instructor or instructors.

(2) The application for certification or renewal of a certification of each motorcycle safety course shall be accompanied by a fee of one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Motorcycle safety course certification shall expire two years from the date of the director's certification.

(3) Motorcycle safety courses shall be subject to audits by the department to assure compliance with the Motorcycle Safety Education Act and rules and regulations of the department.

Source: Laws 1981, LB 22, § 3; R.S.1943, (1984), § 60-2111; Laws 1986, LB 1004, § 8; Laws 2011, LB170, § 7.

60-2127 Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.

(1) The director may adopt and promulgate rules and regulations establishing minimum standards, skills' qualifications, and education requirements for motorcycle safety instructors. The director shall issue or renew a certificate in the manner and form prescribed by the director to motorcycle safety instructor applicants who meet such requirements. A motorcycle safety instructor certificate shall expire two years after the date of issuance. To renew a certificate, a person shall submit an application demonstrating compliance with rules and regulations of the department.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle safety instructor by another state or recognized accrediting organization may be issued a motorcycle safety instructor's certificate by the department without having to take the course established in section 60-2128.

(3) A person who holds a valid, unexpired permit issued by the department to be a motorcycle safety instructor before January 1, 2012, shall be recognized as a certified motorcycle safety instructor until January 1, 2014, or until the

expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and become a certified motorcycle safety instructor to teach a motorcycle safety class in this state as provided in rules and regulations of the department.

Source: Laws 1981, LB 22, § 4; R.S.1943, (1984), § 60-2112; Laws 1986, LB 1004, § 9; Laws 2011, LB170, § 8.

60-2128 Motorcycle safety instructor preparation course; department; duties.

The department may adopt and promulgate rules and regulations developing a motorcycle safety instructor preparation course which shall be taught by motorcycle trainers. Such course shall insure that the motorcycle safety instructor who successfully passes the course is familiar with the material included in the particular motorcycle safety course which such motorcycle safety instructor will be teaching.

Source: Laws 1981, LB 22, § 5; Laws 1984, LB 1089, § 4; R.S.1943, (1984), § 60-2113; Laws 1986, LB 1004, § 10; Laws 2011, LB170, § 9.

60-2129 Motorcycle trainers; requirements; certificates; person certified by another state; how treated.

(1) The director may adopt and promulgate rules and regulations establishing minimum education requirements for motorcycle trainers. The director shall issue certificates in the manner and form prescribed by the director to no more than two motorcycle trainers who meet the minimum education, skill, and experience requirements. The department may reimburse documented expenses incurred by a person in connection with taking and successfully passing an educational course to become a motorcycle trainer, as provided in sections 81-1174 to 81-1177, when there are less than two motorcycle trainers working in this state. In return for the reimbursement of such documented expenses, motorcycle trainers shall teach the motorcycle safety instructor preparation course as assigned by the director.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle trainer by another state or recognized accrediting organization may be issued a motorcycle trainer's certificate by the department without having to receive the training required by this section.

(3) A person who holds a valid, unexpired permit issued by the department to be a chief instructor for motorcycle safety before January 1, 2012, shall be recognized as a motorcycle trainer until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and be recertified as a motorcycle trainer to teach a motorcycle safety instructor preparation class in this state as provided in rules and regulations of the department.

Source: Laws 1986, LB 1004, § 11; Laws 2011, LB170, § 10.

60-2130 Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.

All certificates issued under sections 60-2127 and 60-2129 shall be valid for two years and may be renewed upon application to the director as provided in rules and regulations of the department.

Source: Laws 1981, LB 22, § 6; R.S.1943, (1984), § 60-2114; Laws 1986, LB 1004, § 12; Laws 1997, LB 752, § 148; Laws 2011, LB170, § 11.

60-2131 Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.

(1) The director may cancel, suspend, revoke, or refuse to issue or renew certification of a motorcycle safety course, a motorcycle safety instructor's certificate, or a motorcycle trainer's certificate in any case when the director finds the certificate holder or applicant has not complied with or has violated the Motorcycle Safety Education Act or any rule or regulation adopted and promulgated by the director.

(2) No person or provider whose certificate has been canceled, suspended, revoked, or refused shall be certified until the person or provider meets the requirements of rules and regulations of the department and shows that the event or occurrence that caused the director to take action has been corrected and will not affect future performance. Persons or providers who are suspended may be summarily reinstated upon the director's acceptance of a demonstration of compliance and satisfactory correction of any noncompliance. All other persons or providers shall reapply for certification. A person or provider may contest action taken by the director to cancel, suspend, revoke, or refuse to issue or renew a certificate by filing a written petition with the department within thirty days after the date of the director's action.

Source: Laws 1981, LB 22, § 7; R.S.1943, (1984), § 60-2115; Laws 1986, LB 1004, § 13; Laws 1989, LB 285, § 136; Laws 1999, LB 704, § 48; Laws 2011, LB170, § 12.

60-2132 Repealed. Laws 2011, LB 170, § 17.

60-2132.01 Motorcycle Safety Education Fund; transfers.

Within sixty days after January 1, 2012, twenty-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred to the Department of Motor Vehicles Cash Fund and seventy-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred to the Highway Trust Fund. The Motorcycle Safety Education Fund shall be eliminated on such date after the transfers are made.

Source: Laws 2011, LB170, § 13.

60-2133 Repealed. Laws 2011, LB 170, § 17.

60-2134 Repealed. Laws 2011, LB 170, § 17.

60-2135 Repealed. Laws 2011, LB 170, § 17.

60-2136 Repealed. Laws 2011, LB 170, § 17.

60-2137 Repealed. Laws 2011, LB 170, § 17.

60-2138 Repealed. Laws 2011, LB 170, § 17.

60-2139 Rules and regulations.

The director may adopt and promulgate such rules and regulations for the administration and enforcement of the Motorcycle Safety Education Act as are necessary. In adopting such rules and regulations, the director shall comply with the Administrative Procedure Act.

Source: Laws 1981, LB 22, § 14; R.S.1943, (1984), § 60-2119; Laws 1986, LB 1004, § 21; Laws 2011, LB170, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 29

UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

Section

- 60-2904. Terms, defined.
60-2905. Disclosure of personal information prohibited.
60-2907. Motor vehicle record; disclosure; authorized purposes.
60-2909.01. Disclosure; purposes authorized.

60-2904 Terms, defined.

For purposes of the Uniform Motor Vehicle Records Disclosure Act:

(1) Department means the Department of Motor Vehicles or the duly authorized agents or contractors of the department responsible to compile and maintain motor vehicle records;

(2) Disclose means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person, organization, or entity by any means of communication;

(3) Individual record means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request;

(4) Motor vehicle record means any record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle certificate of title, motorboat certificate of title, or state identification card issued by the department or any other state or local agency authorized to issue any of such forms of credentials;

(5) Person means an individual, organization, or entity;

(6) Personal information means information that identifies a person, including an individual's driver identification number, name, address excluding zip code, and telephone number, but does not include information on vehicular accidents, driving or equipment-related violations, and driver's license or registration status; and

(7) Sensitive personal information means an individual's operator's license digital image, social security number, and medical or disability information.

Source: Laws 1997, LB 635, § 4; Laws 2000, LB 1317, § 11; Laws 2001, LB 574, § 32; Laws 2014, LB777, § 12.

Effective date July 18, 2014.

60-2905 Disclosure of personal information prohibited.

(1) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-2906 and 60-2907, the department and any officer, employee, agent, or contractor of the department shall not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

(2) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-483, 60-484, 60-4,144, and 60-2909.01, the department and any officer, employee, agent, or contractor of the department shall not disclose sensitive personal information about any person obtained by the department in connection with a motor vehicle record without the express written consent of the person to whom such information pertains.

Source: Laws 1997, LB 635, § 5; Laws 2000, LB 1317, § 12; Laws 2014, LB983, § 57.

Operative date July 8, 2015.

60-2907 Motor vehicle record; disclosure; authorized purposes.

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the personal information in the record, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(7) For use in providing notice to the owners of abandoned, towed, or impounded vehicles;

(8) For use only for a purpose permitted under this section either by a private detective, plain clothes investigator, or private investigative agency licensed under sections 71-3201 to 71-3213;

(9) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license or CLP-commercial learner's permit that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141;

(10) For use in connection with the operation of private toll transportation facilities;

(11) For bulk distribution for surveys of, marketing to, or solicitations of persons who have expressly consented to such disclosure if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department on a form prescribed by the department;

(12) For any use if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department;

(13) For use, including redisclosure through news publication, of a member of a medium of communication as defined in section 20-145 who requests such information in connection with preparing, researching, gathering, or confirming news information involving motor vehicle or driver safety or motor vehicle theft;

(14) For use by the federally designated organ procurement organization for Nebraska to establish and maintain the Donor Registry of Nebraska as provided in section 71-4822; and

(15) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

Source: Laws 1997, LB 635, § 7; Laws 2000, LB 1317, § 13; Laws 2004, LB 559, § 6; Laws 2010, LB1036, § 34; Laws 2014, LB983, § 58.
Operative date July 8, 2015.

60-2909.01 Disclosure; purposes authorized.

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the sensitive personal information in the record, other than the social security number, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a

private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(3) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(4) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license or CLP-commercial learner's permit that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141; and

(5) For use by employers of a holder of a commercial driver's license or CLP-commercial learner's permit and by the Commercial Driver License Information System as provided in section 60-4,144.02 and 49 C.F.R. 383.73.

Source: Laws 2000, LB 1317, § 14; Laws 2011, LB178, § 20; Laws 2014, LB983, § 59.

Operative date July 8, 2015.

ARTICLE 31

STATE FLEET CARD PROGRAM

Section

60-3101. State fleet card programs; Department of Roads; University of Nebraska; State Treasurer; duties; political subdivisions; utilization authorized; unauthorized use prohibited.

60-3102. State Fleet Card Fund; created; rebates credited to fund; use.

60-3101 State fleet card programs; Department of Roads; University of Nebraska; State Treasurer; duties; political subdivisions; utilization authorized; unauthorized use prohibited.

(1) State fleet card programs shall be created and shall be administered separately by the Department of Roads and the University of Nebraska. The Department of Roads shall administer a fleet card program on behalf of state government and political subdivisions other than the University of Nebraska under a contract through the State Treasurer. The State Treasurer shall determine the type of fleet card or cards utilized in the state fleet card program. The State Treasurer shall contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating a fleet card program on behalf of the state, including the University of Nebraska, and political subdivisions that participate in the state contract for such services. Rules and regulations may be adopted and promulgated as needed by the Department of Roads or the University of Nebraska for the operation of the state fleet card programs. The rules and regulations shall provide authorization instructions for all transactions. Expenses associated with the state fleet card programs shall be considered as an administrative or operational expense.

(2) For purposes of this section, fleet card means a payment card used for gasoline, diesel, and other fuels. Fleet cards may also be used to pay for vehicle and equipment maintenance and expenses at the discretion of the program administrator. The Department of Roads and the University of Nebraska shall each designate a program administrator.

(3) Any state official, agency, board, or commission may utilize a state fleet card for the purchase of goods and services described in subsection (2) of this section for and on behalf of the State of Nebraska. Any political subdivision may utilize a fleet card for the purchase of goods and services described in subsection (2) of this section for lawful government purposes of the political subdivision. No disbursements or cash back on fleet card transactions shall be allowed.

(4) Vendors accepting a state fleet card shall obtain authorization for all transactions in accordance with instructions from the program administrator. Transaction authorization shall be from the financial institution, card-issuing bank, credit card company, charge card company, debit card company, or third-party merchant bank contracted to provide such service to the State of Nebraska. Each transaction shall be authorized in accordance with the instructions provided by the program administrator for each state official, agency, board, or commission or each political subdivision.

(5) Detailed transaction information for the purposes of tracking expenditures shall include fleet card identification, merchant name and address, transaction number, date, time, product, quantity, cost, and equipment meter reading if applicable. A state fleet card program may require an itemized receipt for purposes of tracking expenditures of a state fleet card purchase from a commercial vendor as acceptable detailed transaction information. If detailed transaction information is not provided, the program administrator shall have the authority to temporarily or permanently suspend state fleet card purchases in accordance with rules and regulations.

(6) No officer or employee of the state or of a political subdivision shall use a state fleet card for any unauthorized use.

Source: Laws 2013, LB137, § 1.

60-3102 State Fleet Card Fund; created; rebates credited to fund; use.

The State Fleet Card Fund is hereby created. All rebates received by the state from the fleet card program entered into by the State of Nebraska pursuant to section 60-3101 shall be credited to the fund. The fund may consist of fleet card rebates received on behalf of state officers, agencies, boards, and commissions and political subdivisions and shall be administered by the State Treasurer. Fleet card rebates received on behalf of state officers, agencies, boards, and commissions shall be transferred by the State Treasurer from the fund to the General Fund. Fleet card rebates received on behalf of political subdivisions shall be disbursed to political subdivisions consistent with the volume spent and contract terms.

Source: Laws 2013, LB137, § 2.